

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

VS.

CR. NO. 15-4268 JB

ANGEL DELEON, et al.,

Defendants.

VOLUME 1

Transcript of Motions and James Hearing
Proceedings before The Honorable James O. Browning,
United States District Judge, Las Cruces, Dona
County, New Mexico, commencing on November 27, 2017.

For the Government: Ms. Maria Armijo; Mr. Randy
Castellano; Mr. Matthew Beck

For the Defendants: Mr. Brock Benjamin, Mr. Richard
Sindel; Ms. Cori Harbour-Valdez; Mr. Patrick Burke;
Mr. Jim Castle; Mr. Robert Cooper; Mr. James Lahann;
Mr. Orlando Mondragon; Mr. John Granberg; Mr. Scott
Davidson; Ms. Amy Jacks; Mr. Richard Jewkes; Mr. Marc
Lowry; Ms. Theresa Duncan; Ms. Amy Sirignano; Mr.
Christopher Adams; Mr. Michael Davis; Ms. Carey
Bhalla; Mr. Ryan Villa; Mr. Donovan Roberts; Ms.
Angela Arellanes; Mr. Samuel Winder

For the Defendants (Via telephone): Ms. Justine
Fox-Young; Ms. Amy Sirignano (a.m. only)

1 THE COURT: Good morning, everyone.

2 I appreciate everyone making themselves
3 available to me this morning. How are y'all all
4 doing?

5 All right. The Court will call United
6 States of America versus Angel DeLeon, et al.,
7 Criminal Matter No. 15-4268 JB.

8 If counsel will enter their appearances for
9 the Government.

10 MS. ARMIJO: Good morning, Your Honor.
11 Maria Armijo, Randy Castellano, and Matthew Beck on
12 behalf of the United States.

13 THE COURT: Ms. Armijo, Mr. Castellano, Mr.
14 Beck, good morning to you.

15 All right. And let's go through -- for
16 the -- on the defendants, for Defendant Joe Lawrence
17 Gallegos.

18 MR. SINDEL: Good morning, Your Honor.
19 Richard Sindel for Mr. Gallegos.

20 THE COURT: Mr. Sindel, Mr. Gallegos, good
21 morning to you.

22 THE DEFENDANT: Good morning, Your Honor.

23 MR. SINDEL: Mr. Benjamin is in trial. So
24 he may be here later.

25 THE COURT: All right. And for Defendant

1 Edward Troup.

2 MS. HARBOUR-VALDEZ: Good morning, Your
3 Honor. Cori Harbour-Valdez and Pat Burke on behalf
4 of Edward Troup.

5 THE COURT: All right. Ms. Harbour-Valdez,
6 Mr. Burke, Mr. Troup, good morning to you.

7 THE DEFENDANT: Good morning, Your Honor.

8 THE COURT: And for Defendant Billy Garcia.

9 MR. COOPER: Good morning, Your Honor. Bob
10 Cooper and Jim Castle on behalf of Billy Garcia. He
11 is present today.

12 THE COURT: All right. Mr. Cooper, Mr.
13 Castle, Mr. Garcia, good morning to you.

14 And for Defendant Allen Patterson.

15 MR. LAHANN: Good morning, Your Honor.
16 Jeff Lahann on behalf of Mr. Patterson.

17 THE COURT: Mr. Lahann, good morning to
18 you. Mr. Patterson, good morning to you.

19 THE DEFENDANT: Good morning, Your Honor.

20 THE COURT: And for Defendant Christopher
21 Chavez.

22 MR. GRANBERG: Good morning, Your Honor.
23 John Granberg on behalf of Christopher Chavez.

24 THE COURT: Mr. Granberg, Mr. Chavez, good
25 morning to you.

1 THE DEFENDANT: Good morning.

2 THE COURT: And for Defendant Arturo
3 Arnulfo Garcia?

4 MR. DAVIDSON: Your Honor, Scott Davidson
5 here on behalf of Mr. Garcia.

6 THE COURT: All right. Mr. Davidson,
7 Mr. Garcia, good morning to you.

8 THE DEFENDANT: Good morning.

9 THE COURT: And for Defendant Daniel
10 Sanchez.

11 MS. JACKS: Good morning, Your Honor. Amy
12 Jacks and Richard Jewkes for Mr. Sanchez.

13 THE COURT: All right. Ms. Jacks,
14 Mr. Jewkes, Mr. Sanchez, good morning to you.

15 And for Defendant Anthony Ray Baca.

16 MS. DUNCAN: Good morning, Your Honor.
17 Theresa Duncan and Marc Lowry on behalf of Mr. Baca,
18 who is present.

19 THE COURT: Ms. Duncan, Mr. Lowry, Mr.
20 Baca, good morning to you.

21 THE DEFENDANT: Good morning, Your Honor.

22 THE COURT: And for Defendant Christopher
23 Garcia.

24 MR. ADAMS: Good morning, Your Honor.
25 Chris Adams, here with Cindy Gilbert in the

1 courtroom, and Amy Sirignano is joining us by phone.
2 She was ill this morning. We are here for Mr. Chris
3 Garcia.

4 THE COURT: All right. Mr. Adams, Mr.
5 Gilbert, Ms. Sirignano, Mr. Garcia, good morning to
6 you.

7 MS. SIRIGNANO: Good morning, Your Honor.

8 THE COURT: And for Defendant Carlos
9 Herrera.

10 MR. DAVIS: Good morning, Judge. Michael
11 Davis and Carey Bhalla on behalf of Mr. Herrera.
12 Also appearing with us is our legal assistant, Sonia
13 Salazar.

14 THE COURT: All right. Mr. Davis, Ms.
15 Bhalla, Ms. Salazar, Mr. Herrera, good morning to
16 you.

17 And for Defendant Rudy Perez.

18 MR. VILLA: Your, Honor, good morning.
19 Ryan Villa on behalf of Mr. Perez, who is present and
20 in custody. And Ms. Fox-Young is joining us on the
21 phone.

22 THE COURT: All right. Mr. Villa. Ms.
23 Fox-Young, are you there?

24 MS. FOX-YOUNG: I am, Judge. Good morning.

25 THE COURT: Good morning. And Mr. Perez,

1 good morning to you.

2 THE DEFENDANT: Good morning.

3 THE COURT: And for Defendant Andrew
4 Gallegos.

5 MR. ROBERTS: Good morning, Your Honor.
6 Donovan Roberts on behalf of Mr. Andrew Gallegos, who
7 is present.

8 THE COURT: All right. Mr. Roberts, Mr.
9 Gallegos, good morning to you.

10 THE DEFENDANT: Good morning.

11 THE COURT: And for Shauna Gutierrez.

12 MS. ARELLANES: Good morning, Your Honor.
13 Angela Arellanes for Ms. Gutierrez, who appears in
14 person.

15 THE COURT: All right. Ms. Arellanes, Ms.
16 Gutierrez, good morning for you.

17 THE DEFENDANT: Good morning.

18 THE COURT: All right. And Ms. Wild, are
19 you on the phone as well?

20 THE CLERK: I am, Judge. I think you may
21 have missed an entry for Brandy Rodriguez.

22 THE COURT: All right. Ms. Rodriguez.

23 MR. WINDER: Good morning, Your Honor.
24 Samuel Winder on behalf of Jerry Walz on behalf of
25 Brandy Rodriguez.

1 THE COURT: All right. Ms. Rodriguez,
2 good morning to you. Mr. Winder, good morning to
3 you.

4 All right. A couple of things -- I've got
5 so much paper here that -- on the jury
6 questionnaires, I wanted to send out about 2,000
7 questionnaires, given my experience in high profile
8 cases, large cases, where I think that there might be
9 some difficulty in seating a jury. I had to kind of
10 negotiate with Jury Services. That shows you the
11 power of a federal judge. But I negotiated. They
12 wanted about 600, so we ended up with 1500. So Jury
13 Services ultimately decided to send out 1500
14 questionnaires. I think we can get a jury picked
15 with that. It's a little lower than what I wanted,
16 but I think that's where we are.

17 Mr. Davis, I've been working on your
18 opinion. I worked on it during the Thanksgiving
19 holidays. I didn't get it done. I'll get it in
20 front of me. I brought a draft with me. So the
21 draft is currently about 39 pages. I'm going to have
22 to work on it some more. But right now it's drafted
23 as a grant for the motion to disqualify. I'm just
24 having a hard time seeing how I can say that this is
25 not a similarly related case. So I think I indicated

1 at the last hearing that you probably need to get
2 your house in order. But that's where I'm leaning.
3 I apologize for not being able to get it out, but I
4 just had a lot of stuff going on. But I have been
5 working on it. I read your supplemental materials
6 and things like that, but that's where I am on that.

7 MR. DAVIS: Judge, is there any possibility
8 the Court would consider --

9 THE COURT: You've got a mic right there
10 beside you, Mr. Davis.

11 MR. DAVIS: Judge, has the Court considered
12 the possibility of just disqualifying me from
13 handling Mr. Martinez, as opposed to removing me from
14 the entire case as an alternative to
15 disqualification?

16 THE COURT: Yeah, I think that's part and
17 parcel of the motion and the discussion, so I'll deal
18 with that. But I'm not sure I can really sort that
19 out and leave you in the case. So I'll work on it.
20 I'll try to get this out to you. I'll try to get it
21 out to you this week. I was hoping I'd get it out
22 before, but did not. But I'll try to get it out.

23 MR. DAVIS: Judge, what is your Court's --
24 what's the Court's consideration of me at this point
25 staying in court? Do you want me to stay?

1 THE COURT: Go ahead and stay in court. I
2 haven't issued it, and -- I've been working on the
3 thing. It's got some issues. I'm not completely
4 done, but I wanted to give you a heads-up where I'm
5 headed, so you can work to get your house in order.
6 But I'm not ready to issue an opinion or order yet.

7 MR. DAVIS: Thank you, Judge.

8 THE COURT: All right. Unless somebody has
9 something else that we need to raise from a
10 preliminary matter, I think y'all have been working
11 with Ms. Wild to put some order together to the
12 hearings that we have today. So unless there is
13 another reason to approach these, why don't we take
14 up Mr. Perez' motion for production of alleged
15 co-conspirator statements and for pretrial hearing on
16 their admissibility.

17 I guess I think -- and correct me if I'm
18 wrong -- sometimes in my mind -- and I hope y'all
19 bear with me a little bit -- I merge some of the
20 issues that we dealt with with Mr. Garcia since we
21 had so many motions that are similar to the ones
22 here, and so I'm not always quite certain what I have
23 said in regard to those motions in here.

24 But, in any case, if I haven't said it
25 here, I guess I'm having a hard time figuring out

1 what the basis is for me ordering the Government to
2 put a list of co-conspirator statements together. It
3 does not exist, so it would have to be something that
4 would have to be put together. It would be in the
5 nature of an interrogatory. And so I'm not sure
6 that -- except for my just ability to use my raw
7 judicial power to require the Government to do it,
8 I'm not sure there is really much justification and
9 reasons for it. So I'm not inclined to order them to
10 produce any sort of list of co-conspirator statements
11 that they have to prepare.

12 On the other hand, let me talk a little bit
13 about the James hearing and those things that we're
14 going to be taking up today. The Tenth Circuit, as
15 everybody has noted, has a strong preference for a
16 pretrial determination of the admissibility of
17 co-conspirator statements. I don't see any reason to
18 deviate from that strong preference. We're still
19 two-plus months out from trial. And I think we've
20 got time to do it, and I think we should do it. And
21 I don't think we should be trying to have a trial
22 like this, and just relying upon the Government's
23 linking it up down the road is the way to go. So I
24 think that we will have a James hearing, and the
25 Government will have to produce a live witness or

1 witnesses. I don't think that a written proffer is
2 enough. The Government -- I mean, the Tenth Circuit
3 has also indicated that those are not favored. And
4 so I would prefer to have live witnesses, live
5 witness or witnesses.

6 The Government has asked that they be able
7 to put on a case agent that summarizes the
8 co-conspirator statements. It seems the Tenth
9 Circuit has approved that. I'm not telling the
10 Government how to try their case, and I'm not going
11 to tell them how to do the James hearing. But you've
12 got to make your proof by a preponderance of the
13 evidence. If you think you can establish it with one
14 agent, subject to cross-examination, bringing in the
15 statements, then the Tenth Circuit seems to have
16 approved that, and I will, too, but -- so it's not
17 the method that I'm approving. You just have a
18 burden of proving it by a preponderance of the
19 evidence. If you can do it with one witness or 20
20 witnesses, that's -- the Government always has to
21 make that assessment as to how they're going to prove
22 their case. And I can't tell you in advance whether
23 one witness or more are going to be necessary. So
24 you'll have to make that judgment. But in certain
25 situations the Tenth Circuit has indicated that is

1 appropriate.

2 So Mr. Villa, with that guidance -- and I
3 think I've been fairly consistent on this throughout,
4 although we might not have touched on it in some
5 detail -- what do you need with your motion?

6 MR. VILLA: I think that probably satisfies
7 it, Your Honor. If this was six months earlier, I
8 might have pressed you to try it, and make the
9 Government identify statements so we can try to work
10 some of these issues out. But I think we're past
11 that point now. I think if the Court is going to
12 order a pretrial James hearing, I think we should go
13 ahead and get on with it as we're as close as we are
14 to trial. So that's -- I think that was really the
15 goal of the motions, to get us to the James hearing,
16 and see if we couldn't work some of these issues out.
17 But we're prepared to proceed on the James motion.

18 THE COURT: Okay. Let me ask: Since your
19 motion is first, but a lot of other motions teed up,
20 let me see from the defendants' side, anybody else
21 want to talk about procedure, how I'm inclined to
22 proceed on the James hearings, co-conspirator
23 statements?

24 MS. JACKS: Your Honor, may I --

25 THE COURT: Ms. Jacks, you may.

1 MS. JACKS: I just have a comment. And
2 that is that to the extent that the Government
3 provides us with what statements it intends to
4 introduce as co-conspirator statements, we could
5 brief that for the Court prior to any hearing, and it
6 might make the hearing shorter. And I thought that
7 was part of Mr. Villa's thought in filing his motion.

8 THE COURT: Well, I'm going to let the
9 Government -- I'm not going to order it. If they
10 want to do that to try to expedite things, that's
11 their business. But I'm not going to order them to
12 prepare and produce a document that the law doesn't
13 require them to produce.

14 Mr. Burke?

15 MR. BURKE: Your Honor, I endorse the
16 comments of Mr. Ryan Villa and Amy Jacks. And your
17 suggestion makes good sense. I did want to just
18 advise the Court, in Colorado -- where we are not --
19 it's routine to have one of these lists, and the
20 judges there have found that it streamlines things.
21 And I think almost all the judges do that there. And
22 I attached one to one of the pleadings. And I then
23 asked a law clerk -- third-year student at CU Law
24 School to check. And as it turns out, New Mexico is
25 the only place that doesn't do that. But the goal

1 was to have a pretrial hearing sufficiently in
2 advance that it makes sense and streamlines the
3 process.

4 So I believe what the Court has adopted
5 will work. But I didn't want the Court to think that
6 it was some sort of idle suggestion. It's followed
7 by a number of courts.

8 THE COURT: Yeah, I looked at it. I mean,
9 I can't disagree that it would make sense and be
10 helpful. But I'm -- just seems to me it would be
11 kind of raw judicial power for me to start ordering
12 the Government to do it. I just don't see any basis
13 for it other than just: I want it. And it doesn't
14 seem like I can really rightfully require it.

15 MR. BURKE: I understand.

16 THE COURT: All right. Thank you, Mr.
17 Burke.

18 Anyone else?

19 All right. Mr. Castellano, are you going
20 to handle this portion?

21 MR. CASTELLANO: Yes, Your Honor.

22 THE COURT: Mr. Castellano.

23 MR. CASTELLANO: Your Honor, I hear where
24 you're coming from this morning, so I'm not going to
25 belabor the point too much. I can tell you -- and

1 you probably know this from your memory -- in the
2 Vigil case you did not hold a James hearing. I will
3 say it was slightly different. The Government moved
4 for the James statements to be admitted prior to a
5 first trial, which Judge Parker tried. And the case
6 was reassigned to you. You reviewed the record, and
7 based on that, agreed not to hold a James hearing.

8 THE COURT: Judge Parker, though, held one,
9 didn't he?

10 MR. CASTELLANO: I don't recall if Judge
11 Parker did. I think --

12 THE COURT: I thought Judge Parker held
13 one, or in some ways satisfied James, and so it
14 wasn't necessary to redo it. But is my memory off?

15 MR. CASTELLANO: It might be. And I may
16 have missed it in the case. What I remember from
17 reading the case is that there were frequent
18 objections during trial on hearsay grounds. So it
19 may be that there was --

20 THE COURT: What happened is on the first
21 trial, Mr. Bowles and Mr. Bregman chose not to object
22 to any of the exhibits. And on the retrial they
23 chose to object to them all. So the second trial was
24 a whole lot different on objections, because I had to
25 make a lot of rulings that Judge Parker did not have

1 to make. I do remember that. I don't know if that's
2 helpful or not. But it was a different trial. There
3 were 680 exhibits, and every one was objected to.

4 MR. CASTELLANO: Ultimately, you concluded
5 that the United States -- you conditionally granted
6 the motion; it was the United States' motion --
7 subject to the United States proving that the
8 statements were made in the scope of the conspiracy
9 and in furtherance thereof. So, ultimately, you did
10 not hold a hearing, and left it to the United States
11 to prove up the final basic element of James, which
12 is to prove it was in furtherance of conspiracy.

13 One thing I have done before, when we did
14 the Aryan Brotherhood cases, is we did prepare, I
15 think basically a summary. We put on a summary
16 witness. The defense stipulated that that would
17 basically be the agent's testimony because it was
18 clear that was going to be the case. And then the
19 defense stipulated to the direct examination, and
20 then went straight to cross-examination to ask the
21 agent about the statements. So that is one
22 possibility.

23 We will -- depending on when the hearing is
24 set, how much time we have, we will consider
25 potentially putting a list like that together, if it

1 moves things along. I don't expect that we're going
2 to have numerous witnesses, because it will become,
3 in essence, a pretrial trial. So more than likely it
4 will be a summary witness. And I understand the
5 Court's leanings, with the understanding that the
6 burden is on us.

7 Your Honor, I don't know if we want to get
8 a head start on this, or we can just make them
9 exhibits at the hearing itself, but we have about 14
10 plea agreements in this case which will establish at
11 least the first two requirements of James, which is
12 the existence of the conspiracy, as well as
13 membership in the conspiracy. So I can proffer those
14 to the Court today, or I can just make them exhibits
15 at the hearing, or I can just give you the numbers.
16 But they're all on the docket.

17 THE COURT: I agree with you. Let's go
18 ahead and get those in, because I do need to have the
19 defendants start telling me where the battle is. You
20 know, if they're not going to contest these two
21 elements, then where is the battle? So let's go
22 ahead and mark those. Shall we mark them
23 individually? Do you want to mark them as one, as a
24 group? How do you want to proceed on that, Mr.
25 Castellano?

1 MR. CASTELLANO: I will get some stickers
2 during the break and mark them individually, because
3 I think they could be taken in a group. But if we're
4 going to talk about individual plea agreements from
5 time to time, it would be easier just to identify
6 them by exhibit number.

7 THE COURT: And you said there were 14 of
8 them?

9 MR. CASTELLANO: I believe it's 14. I was
10 just counting as the Court was talking. But it's in
11 the vicinity of 14. But it's basically the plea
12 agreement of each defendant who has pled guilty in
13 this case, including admissions that a conspiracy
14 existed and admissions that other people remaining in
15 the case were members of the conspiracy. So I think
16 we'll be a long way down the road for the first two,
17 which will allow us probably just to focus on the
18 statements themselves, once we get to the hearing.

19 THE COURT: All right. So for the purposes
20 of the James hearing, any objection to admitting
21 Government's Exhibits 1 through 14, which are the
22 plea agreements? Not hearing any objections, the
23 Government --

24 MR. CASTLE: Your Honor, I would object,
25 because I believe that this needs to be subject to an

1 evidentiary hearing. A lot of these plea agreements
2 basically are saying: Yes, the SNM existed, and they
3 committed some bad things during a long period of
4 time. And there is no analysis as to whether there
5 is different sets or groups within the SNM, whether
6 there is individual agreements that are made between
7 members that are not in furtherance of the conspiracy
8 that is alleged. These plea agreements are very
9 imprecise in the definition -- or in defining what
10 the conspiracy is.

11 And so these are documents that are drafted
12 by the Government, not by the witness. These aren't
13 witness statements. These are drafted by the
14 Government. Obviously, one of the purposes is not
15 only to do a plea agreement, but to establish a James
16 proffer apparently. And so I object to them because
17 they're not subject to any kind of evaluation here by
18 the Court as to whether they're to be trusted.

19 THE COURT: Well, you're going to get your
20 evidentiary hearing. So, I mean, all it is is some
21 documentary evidence, and I think it has some weight.
22 We've got 14 people signing off on the plea
23 agreement. That's what they're going to testify to.

24 MR. CASTLE: I guess, to the extent that
25 we're able --

1 MR. ADAMS: Judge, I'm told that people on
2 the phone can't hear Mr. Castle. May I share my mic
3 with him?

4 THE COURT: Yeah. However we want to get
5 it to him. Are y'all hearing me at the back okay?

6 MR. CASTLE: Perhaps the people on the
7 phone are a little luckier than those in the
8 courtroom.

9 But as long as the defense has the
10 opportunity to call those witnesses and examine them,
11 I guess we could proceed in this fashion. But if the
12 idea is the Government is going to make its proffer a
13 part, through plea agreements, and then protect these
14 individuals from being examined about these
15 statements, I would object. So I think if the Court
16 is going to take them as exhibits with the idea that
17 the defense believes that it needs to examine these
18 witnesses on the statements that are in the plea
19 agreements, that that would probably be a sufficient
20 remedy to allow us to contest the information within
21 those plea agreements.

22 THE COURT: Well, I'm not sure I've seen --
23 maybe you have -- I haven't seen where the defendants
24 have called witnesses at a James hearing. It's
25 usually the Government's burden of proof, so it's

1 their witnesses who are put on the stand and
2 cross-examined. As I just indicated, I'm not
3 requiring them to call any particular witness or put
4 on any -- you know, try their case or their hearing
5 any particular way. But I doubt it's going to
6 include calling 14 witnesses.

7 MR. CASTLE: No, I understand they may not
8 wish to do that. But since it is a preliminary issue
9 for the Court to decide by a preponderance of the
10 evidence, obviously, the defense is allowed to put on
11 evidence against it.

12 Normally, those courts that actually
13 conduct a James hearing within the context of a
14 trial, the witnesses who are being called by the
15 Government to establish the conspiracy are subject to
16 cross-examination by the defense. And so I believe
17 the defense does have the right to not only
18 cross-examine the witnesses the Government chooses to
19 put on, but put on contrary evidence to convince this
20 Court that the conditions precedent necessary for
21 admission are not satisfied.

22 THE COURT: Well, would it be better to go
23 back to what Mr. Castellano is saying, and do it at
24 trial?

25 MR. CASTLE: No, I don't believe it would,

1 because there runs the risk that the rules of
2 evidence cautions against, which is, to the extent
3 possible, preventing the exposure to a jury of
4 evidence that may end up being considered
5 inadmissible by the Court.

6 THE COURT: Well, I'm not foreclosing you
7 from presenting your own evidence and what you need
8 to do at James. I probably am not going to be too
9 excited about the defendants calling 14 witnesses to
10 try to rebut the Government's presentation. But I'm
11 not foreclosing it. Whatever evidence you think you
12 need --

13 MR. CASTLE: Your Honor, I understand.
14 That wasn't my point to do that. Granted, I'd love
15 to call any witness that's going to be against my
16 client, and get a free run at them. But that's not
17 what my goal is here. It's that here we're having
18 exhibits being introduced that were drafted by the
19 Government, in their words.

20 And so this is a difficult situation. This
21 isn't giving the Court a transcript of an interview
22 with a confidential informant who we can at least
23 assess what their own words are. This is Mr.
24 Castellano and Ms. Armijo's words, or whoever drafted
25 this plea agreement. They drafted it and gave it to

1 the man to sign.

2 So under those particular circumstances, I
3 think there is a need, perhaps in certain situations,
4 to call those witnesses.

5 THE COURT: All right. I understand your
6 position. I won't foreclose it. But I'm probably
7 tipping my hand that that's not the way we're going
8 to really run a James hearing.

9 All right. Anyone else on the defendants'
10 side want to say anything on this issue?

11 All right. Then I'll admit Government's
12 Exhibit's 1 through 14 -- if that's the correct
13 number -- for the purposes of the James hearing.

14 MR. CASTELLANO: Your Honor, during the
15 break I will get exhibit stickers and put them on
16 there and make sure the record is clean in terms
17 of --

18 THE COURT: Ms. Solis can hand them to you
19 right now.

20 What else, Mr. Castellano?

21 MR. CASTELLANO: Nothing else, Your Honor.
22 Thank you.

23 THE COURT: All right. Anything else you
24 want to say, Mr. Villa? Anything else on your
25 motion?

1 MR. VILLA: Your Honor, I don't think so.
2 I guess I just wanted to clarify when the Court
3 intends to have this hearing.

4 THE COURT: Well, let me ask Ms. Wild that.
5 She's been continuing to work on this. As I prepared
6 for this hearing and, of course, it's always a little
7 bit difficult to do things over holidays, but I
8 wasn't quite certain if we were having the James
9 hearing this week, from reading all the materials.
10 So I thought we might be here doing a James hearing
11 this morning with your motion.

12 Ms. Wild, what was your sort of
13 anticipation? Did you think that it was going to be,
14 I hear these motions today, and then do a James
15 hearing? Or did you think we were setting up a James
16 hearing today? And if we weren't setting up a James
17 hearing today, when do you think that we're going to
18 set the James hearing?

19 THE CLERK: My anticipation was the same as
20 yours.

21 THE COURT: That we were going to have a
22 James hearing today?

23 THE CLERK: Yes, sir.

24 THE COURT: All right.

25 MR. VILLA: That's kind of what I thought,

1 Your Honor.

2 THE COURT: I guess that's what I was
3 thinking we were here for today with these motions
4 set up. Mr. Castellano, are you ready to put on Mr.
5 Acee, or whoever you're going to have as your person?

6 MR. CASTELLANO: No, Your Honor, not to lay
7 out all of the statements. My understanding of the
8 hearing today was to decide whether or not we were
9 going to have a James hearing, and then possibly set
10 the parameters for the hearing. And even some of the
11 defense motions indicated that they would request --
12 actually, some of the requests were that they get the
13 statements before the James hearing. So I think even
14 the defense anticipated that we would have a hearing
15 at a later date, as did I.

16 THE COURT: Well, let's do this: We've got
17 some motions we've got to cover. But why don't you
18 begin to prepare for a James hearing this week while
19 I'm down here. So work with Mr. Acee or whoever
20 you're going to have present those. And I'll try to
21 skip around and get through these other motions. But
22 if I run out, we'll probably start the James hearing
23 at some point this week. Okay?

24 MR. CASTELLANO: Understood, Your Honor.

25 THE COURT: Thank you, Mr. Castellano.

1 MR. ADAMS: Your Honor, may I?

2 THE COURT: You may, Mr. Adams.

3 MR. ADAMS: We also filed for a James
4 hearing in 1303, and the Government's response was
5 1379, and our reply was 1436. I think we were on the
6 schedule as well, and asked -- said we have the same
7 position as Mr. Villa.

8 THE COURT: Yeah, I'm probably putting --
9 the reason I started with those comments is I know
10 there are a lot of motions that raise this in various
11 forms. Some of them want conspirators' statements,
12 some want a James hearing. So I thought I'd just
13 start with that and get us on track. But I
14 understand that there are a number of motions that
15 that applies to.

16 MR. ADAMS: Thank you.

17 THE COURT: All right. Thank you, Mr.
18 Adams.

19 All right. Let's then go to the United
20 States' amended notice of expert witness testimony.
21 And again, if I had Ms. Wild here and had been able
22 to talk with her a little bit more before the --
23 without the intervening holidays, I might be more
24 precise as to where I have made these comments; if I
25 made them in the case of Mr. Garcia when he was going

1 to trial on his drug case, or whether it's in this
2 context.

3 Let me exhort everybody on these experts.
4 After reading everything -- and I have read
5 everything, so I'm not sitting up here without having
6 read materials. I mean, everybody has got to do what
7 they've got to do to defend their clients here. I'm
8 not trying to shortcut anything. But it does seem to
9 me that it behooves us to get to the core issues.

10 It seems to me that there are probably some
11 experts, regardless of what the defendants do or want
12 to do, are going to testify in this trial. And then
13 there are others that there may be genuine issues
14 about either their testimony or the scope of their
15 testimony. And I guess I'd like to get to the core
16 issues, and encourage the defendants to get to the
17 core issues as soon as possible; identify for me
18 where the battles are, and then maybe on some of the
19 others we can just move ahead.

20 I mean, when I look at Dr. Zumwalt, who is
21 the state coroner, I guess I'm having a hard time
22 seeing why he wouldn't be allowed to testify in this
23 trial.

24 And on the other hand, the gang experts,
25 I've already indicated that I'm probably going to

1 clip significantly that testimony on both the
2 Government and the defendants' side to conform to the
3 Second Circuit's opinion, which I think the Tenth
4 Circuit has adopted or indicated they approve of in
5 the Martinez -- Second Circuit's case in Martinez.

6 So there is areas like that. But by and
7 large, it seems to me, it would be wise if we really
8 focus in on what needs to be decided, and try to cut
9 through some of the -- I won't say -- just cut
10 through some of the static that is here.

11 So the Government has sort of put out their
12 position. Maybe I ought to hear from the defendants.

13 Mr. Adams, I think you've been taking the
14 lead on this. With that sort of admonition, tell me
15 where we're going with the Government's experts.
16 What do you need?

17 MS. SIRIGNANO: Your Honor, this is Amy
18 Sirignano. I apologize, I'm ill this morning, but I
19 can take this one just briefly. The main issue --
20 and I don't disagree with the Court regarding
21 Dr. Zumwalt. But we haven't received -- and it might
22 be in this most recent batch of discovery which we
23 received right before the holidays that I haven't had
24 an opportunity to go through yet -- but we haven't
25 received three CVs from the Government.

1 Dr. Zumwalt's is one of them. So that was the issue
2 with him.

3 And frankly, Your Honor, it would be -- the
4 discussion in the motion that -- or the response that
5 we filed, Documents 1255, was that the Government is
6 not abiding by the requirements of Rule 16.

7 And I have this issue right now in the
8 Tenth Circuit Court of Appeals in a case before Judge
9 Herrera, United States v. Raymond Moya. And so on
10 page 7 of Document 1255, I put forth what Rule 16
11 requires, which is the written summary of any
12 testimony of the expert, which must describe the
13 witness' opinion, the basis and reasons for the
14 opinions and the witness' qualifications, citing this
15 United States v. Sandoval case. It's from March 1st
16 of 2017.

17 And so, Judge, the Government's amended
18 notice of expert witness testimony doesn't abide by
19 the Rule 16 requirements, and we don't have what we
20 need in terms of the basis and reasons, and the
21 qualifications with the missing CVs. And so we're
22 just looking for more information.

23 And we expected to have a Daubert hearing
24 today. I don't know if the Government has their
25 witnesses there.

1 THE COURT: Well, let's focus a second on
2 Dr. Zumwalt. Do you have his autopsy reports? Has
3 that been produced?

4 MS. SIRIGNANO: Your Honor, I'm going to
5 defer to Ms. Harbour-Valdez. Dr. Zumwalt's
6 information pertains to her counts and not
7 Mr. Garcia's counts.

8 THE COURT: My understanding, those have
9 been produced, right?

10 MS. HARBOUR-VALDEZ: They have, Your Honor.
11 In the discovery that was produced last week, we
12 received Dr. Zumwalt's CV, as well as Ms. Radecki's
13 CV. And those were the two we were concerned about.

14 THE COURT: I mean, my guess is that, with
15 Dr. Zumwalt, you've got his report. He does lots of
16 autopsies. He's probably not going to say anything
17 that's not in his report. You've got his CV. What
18 else do we need with Dr. Zumwalt?

19 MS. HARBOUR-VALDEZ: We don't have any
20 other issues, Your Honor.

21 THE COURT: Anybody else need anything on
22 Zumwalt? Mr. Villa?

23 MR. VILLA: I'll try to talk really loud,
24 Your Honor. My only concern is -- with respect to
25 the Javier Molina murder, is that the notice just

1 said he's going to testify to what's in the autopsy
2 report. And you've seen those reports; they're long.
3 So if we get into trial and he wants to say something
4 else, things that I could imagine he might want to
5 say about the Molina murder, I just want to be clear
6 that he's sort of limited to what's in that autopsy
7 report. He can't go beyond it, because it's not in
8 the Government's notice that he's going to say
9 anything else.

10 THE COURT: Well, I am going to do this,
11 I'm going to say his reports are adequate disclosure,
12 I will have to hold the Government to that; that if
13 it's not in his report, he can't go beyond that.

14 Who is handling this? Mr. Beck, is this
15 your area?

16 MR. BECK: Yes, Your Honor.

17 THE COURT: All right. Can you live with
18 that, that if I say, as far as Zumwalt, if he's going
19 to testify about anything else beyond his report, you
20 need to send the defendants a letter, or file
21 something with the Court that indicates: Here's an
22 additional area he's going to testify about. But
23 otherwise, I'll let the Government rest on his
24 reports and his CV.

25 MR. BECK: That sounds fair, Your Honor.

1 THE COURT: All right. So that will be the
2 rule on Zumwalt. Anything else on Zumwalt?

3 All right. Let's go to Radecki. I guess
4 what I'm going to have to do on these, Mr. Beck, is
5 I'm going to have to hold the Government to what's in
6 the rule. So I'm looking at your notice here. Tell
7 me where on page 2 it states her opinions.

8 MR. BECK: Her opinions are those revealed
9 in her written reports disclosed to the defendants.

10 THE COURT: Okay. And so, again, using the
11 same sort of thing we did with Zumwalt, everything
12 she is going to say is in her reports. And if you're
13 going to try to get anything else in, you'll send,
14 something to the defendants about that?

15 MR. BECK: That's fine, Your Honor.

16 THE COURT: Can everybody live with that on
17 Ms. Radecki? Anything else we need on Ms. Radecki?

18 All right. Let's go to Tokumaru,
19 Ms. Tokumaru. I believe there is also -- she has
20 done a written report. Is that also the case?

21 MR. BECK: That's right, Your Honor.

22 THE COURT: Same rules as for Zumwalt?

23 MR. BECK: Yes, Your Honor. I think that's
24 fair.

25 THE COURT: Anybody have any different need

1 on Ms. Tokumaru? All right. So --

2 MS. SIRIGNANO: Judge, this is Amy
3 Sirignano. I'm just wondering, are we foreclosing
4 the opportunity to have a full Daubert hearing, going
5 through the Government's notice at this point?

6 THE COURT: No, I'm not shutting down any
7 Daubert hearings. I'm just trying to clear up this
8 issue. There was a lot of complaints in the
9 briefing, and I'm not saying it's in yours, but that
10 the Government was giving a one-sentence summary.
11 And what I'm doing is I'm making certain that,
12 basically with this motion, that Rule 16(a)(1)(G) is
13 being complied with so we eliminate that issue today.
14 And if I need to order further disclosures, I
15 disclose those. But I'm not foreclosing any Daubert
16 issues with this motion.

17 MS. SIRIGNANO: Thank you, Judge.

18 THE COURT: All right. So anything else on
19 Ms. Tokumaru? Mr. Villa?

20 MR. VILLA: Your Honor, just generally with
21 this procedure that we're talking about, the concern
22 I have is, if the Government does decide these
23 experts are going to say something else and they want
24 to supplement it, when that happens. I mean, the
25 deadline has already passed. So I would say that

1 they can't supplement it anymore. But it seems like
2 the door is a little bit open for them to do that.

3 THE COURT: Well, I take it with these
4 people that have done reports, you don't anticipate,
5 Mr. Beck, having any further disclosures from them?
6 They're pretty much locked in with their reports; is
7 that correct?

8 MR. BECK: That's correct, Your Honor.

9 THE COURT: All right. I mean, I can't
10 ever just say "never." I mean, trials are dynamic.
11 But I'm with the defendants' position that the time
12 has come, has already passed. So the Government is
13 going to have to justify if something is -- they're
14 going to try to get these experts to say something
15 that's not in these reports, we've got some of these
16 people that are not quite locked in with reports, if
17 I understand the situation. And we have to figure
18 out what to do with those in a moment. But at least
19 these with reports the Government is not
20 anticipating, and I think the time has passed. And
21 if they try to do it, then I'll just have to listen
22 to arguments and see what the situation is.

23 MR. CASTLE: Your Honor, I have an
24 additional concern which actually applies to all the
25 experts.

1 THE COURT: Okay.

2 MR. CASTLE: And I didn't want to remain
3 silent and thereby waive these arguments.

4 Many of the Government's experts in their
5 reports are relying upon another expert or another
6 investigator's statements. So, for example, they
7 might have an autopsy report, and at the end it
8 indicates that there was narcotics found in the
9 system or there weren't narcotics found in the
10 system. That was analyzed by some other lab and some
11 other individual.

12 I raised some of these concerns in the
13 context of the brief that we filed concerning gang
14 experts. The Government, as a rule, has not endorsed
15 those other experts that their own experts are
16 relying upon. And I'll give an example that concerns
17 me. The DNA expert that analyzed a blood sample
18 found at the murder scene in the 2001 murders
19 indicates that -- they analyzed it, and it was
20 consistent with the missing defendant, Mr. DeLeon, as
21 being a contributor to the mixture. The only way
22 that expert got that information was from some other
23 source. Someone said they did a blood-draw on
24 Mr. DeLeon back in 2001, and said this is his blood
25 sample. I asserted in my briefing that that is a

1 problem, a confrontation problem, under Melendez-Diaz
2 and the Bullcoming cases.

3 So what I'm trying to tell the Court is:
4 By not commenting here, I don't want the Court to
5 understand that we're not going to make objections on
6 the constitutional level to various aspects of these
7 experts' opinions. Because, frankly, they're relying
8 upon either hearsay or testimonial materials that the
9 Government either hasn't endorsed or intends to bring
10 in at trial.

11 So, as an overlay, I just wanted to raise
12 that objection. When we get to the gang expert
13 issue, I'll be a little more specific on it. But I
14 didn't want my silence to be interpreted that I'm
15 not -- that we're waiving any other objections on a
16 constitutional or rule of evidence basis.

17 THE COURT: No, I understand that. I put
18 those arguments -- I know they're different than what
19 Ms. Sirignano was talking about -- but I put them in
20 the same category. All we're trying to do is make
21 sure that Rule 16 objections are taken care of. I
22 know the defendants may have some Daubert issues.
23 They may have individual challenges to some
24 particular testimony the experts are going to do.
25 None of that is being waived here by trying to make

1 sure that we get the Rule 16 issues dealt with here
2 at the very beginning.

3 All right. Anything else on Ms. Tokumaru?

4 Everybody happy with where we are? I
5 probably shouldn't use it that way. Nobody is happy.

6 All right. Let's go, then, to Ms. Shirley
7 Garcia. She also has a written report, Mr. Beck?

8 MR. BECK: Yes, Your Honor.

9 THE COURT: You provided the CV?

10 MR. BECK: Yes, Your Honor.

11 THE COURT: Anyone else need anything else
12 under Rule 16 from Ms. Garcia, with the understanding
13 that if she's going to testify about anything
14 further, it will need further disclosures by the
15 Government?

16 All right. Then let's move to Jennifer
17 Otto. She also has a written report.

18 MR. BECK: Yes, Your Honor.

19 THE COURT: Same rules of engagement.
20 Anybody else need anything under Rule 16 from Ms.
21 Otto?

22 All right. Let's go to Mr. Paul --
23 Dr. Paul. He has an autopsy report.

24 MR. BECK: Yes, Your Honor.

25 THE COURT: So, same as Dr. Zumwalt.

1 Anybody need anything further under Rule 16? Same
2 rules of engagement?

3 All right. Let's go to Mr. Streine -- am I
4 staying his name correctly? Streine? Dr. Streine.

5 MR. BECK: That's as good of a guess as
6 mine.

7 THE COURT: Mr. Streine. Remind me on him.
8 Did he -- he has written reports on his ballistics?

9 MR. BECK: Yes, Your Honor.

10 THE COURT: Okay.

11 All right. Same rules of engagement, Mr.
12 Streine?

13 MR. BECK: Yes, Your Honor.

14 THE COURT: All right. Then Ms. Mikesica?
15 And she has a written report as well; correct?

16 MR. BECK: Yes, Your Honor.

17 THE COURT: All right. Anything else
18 needed on her?

19 Tracy Zehringer?

20 MR. BECK: She has a written report.

21 THE COURT: She has a written report as
22 well?

23 MR. BECK: Yes.

24 THE COURT: All right. Ms. Vigil.

25 MR. BECK: Yes, Your Honor, she has a

1 written report.

2 THE COURT: She has a written report.

3 Dr. -- I'm sorry, it's not a doctor, but Mr. Young.

4 MR. BECK: Yes, Your Honor, he has a
5 written report.

6 THE COURT: He has a written report as
7 well. That's been disclosed. Ms. Smith?

8 MR. BECK: Yes, Your Honor, she has a
9 written report.

10 THE COURT: Written report.

11 MS. SIRIGNANO: Your Honor, this is Amy
12 Sirignano. And I just don't have all of the DNA
13 reports that I requested, and so I don't have
14 everything that I need for Rule 16 regarding the
15 tests that she did regarding the DNA analyses.

16 THE COURT: All right. What I'm seeing in
17 your disclosure, Mr. Beck, is that she has produced
18 one report. Are you anticipating any further reports
19 from her, or is it just one report she's going to
20 prepare?

21 MR. BECK: I think my understanding is that
22 her written report is the final written report, and
23 that includes her opinions to which she'll testify.

24 THE COURT: So if she's only got one
25 report, what else do you need, Ms. Sirignano?

1 MS. SIRIGNANO: Your Honor, I think there
2 might be two. Because she worked on the examination
3 regarding the homicide of AB. And then she also
4 performed unknown examination of the alleged firearm
5 for the possible DNA match with my client. And the
6 expert notice says she will testify about the tests
7 she performed on the firearm and the findings as to
8 the firearms described in her report.

9 Well, I don't know what -- exactly what
10 tests she performed, how she did them, you know. And
11 this goes back to the argument I made last time we
12 were before this Court. And so, in order for my DNA
13 expert to be able to challenge her final report, I
14 need Rule 16 discovery that backs up her report.

15 MR. BECK: Your Honor, I think we hashed
16 this out last week when we talked about going through
17 that four-step process, in which if the defendants
18 need more information for some of these DNA tests or
19 forensic examinations, that they ask, and then they
20 disclose the underlying data pursuant to that DAG
21 memo on forensic examinations.

22 That wasn't last week -- it feels like last
23 week -- that was three weeks ago, two weeks ago. So
24 I think we're --

25 THE COURT: Let me ask this: After

1 listening to Ms. Sirignano, do you think there is one
2 report still, or --

3 MR. BECK: I think there may be two. I
4 think we ran into this issue what was now three weeks
5 ago. She did perform two different tests on two
6 different firearms, and they were disclosed in, I
7 think, the same report, some of the same testing. So
8 whether we consider it one report or two, I think Ms.
9 Sirignano is correct, that there are two different
10 firearms she examined.

11 THE COURT: But you think they're all in
12 one report?

13 MR. BECK: I'm not --

14 MS. SIRIGNANO: I don't think they are,
15 your Honor. I think there are two reports.

16 MR. BECK: So there may be two reports.

17 THE COURT: Okay.

18 MR. BECK: So it sounds like there is two
19 reports.

20 THE COURT: But you think she has both of
21 them?

22 MR. BECK: I think so.

23 THE COURT: And do you disagree with that,
24 Ms. Sirignano?

25 MS. SIRIGNANO: I definitely have her final

1 report regarding my client, and it's just limited to
2 my client. So that's why I'm saying there are two
3 reports, because it doesn't mention the homicide of
4 AB in our report.

5 My concern, I think we came up with an
6 agreement the last hearing that the Government would
7 produce the additional DNA documents, and that we
8 would -- I would come back and request for more once
9 we got the initial production out. But I need the
10 underlying data regarding the tests that she
11 performed on this firearm, and the underlying data
12 regarding her findings as to the DNA on the firearms
13 and the holster, which I don't believe I've received
14 yet.

15 THE COURT: All right. But the report
16 states the opinions; correct, Mr. Beck?

17 MR. BECK: Yes, Your Honor.

18 THE COURT: I mean, all the opinions are
19 set forth there. What does she say about the basis
20 of her opinions, the reasons for her opinions? What
21 does she say in the report?

22 MR. BECK: I can't say without the report
23 in front of me. I'd have to get back to the Court on
24 that.

25 THE COURT: Are you willing, able to

1 produce this backup that Ms. Sirignano is looking
2 at -- looking for -- for the opinions?

3 MR. BECK: I think so. I assume -- I mean,
4 I can't say for sure whether the FBI would have it.
5 I assume that they do. I think, as I said I think a
6 couple of weeks ago, we talked about, if the
7 defendants had a need or a request for the underlying
8 data, the DAG memo report, that we disclose that to
9 them. And we're happy to abide by that.

10 THE COURT: Have you sent that letter over,
11 Ms. Sirignano?

12 MS. SIRIGNANO: No, Your Honor. I'm
13 working on it right now.

14 My concern is just timing, when we're going
15 to get these materials.

16 THE COURT: Well, get your letter over. It
17 sounds like we worked out a procedure three weeks
18 ago, and it's triggered by your letter. So get it
19 over. And once you get it over there, if you don't
20 get the satisfaction you want, then you can reraise
21 it with the Court. But it sounds to me like we're
22 pretty close to the Government satisfying its Rule 16
23 obligations. Because you know what the opinions are;
24 you know her qualifications, and some basis and
25 reasons for her opinions. And the Government is

1 willing to give you more.

2 MS. SIRIGNANO: Very well, Your Honor.

3 I'll get it today to the Government.

4 THE COURT: All right. So anything else on
5 Ms. Smith?

6 Let's go to Dr. Kastenbaum. He has -- or
7 she has an autopsy report. Anything further on Dr.
8 Kastenbaum?

9 All right. Let's go to Cindy Wood. And
10 she has a written report as well.

11 MR. BECK: Yes, Your Honor.

12 THE COURT: Anyone else need anything
13 further on Ms. Wood?

14 All right. Then Roger Cain; he has a
15 written report as well.

16 MR. BECK: I don't know that he has a
17 written report.

18 THE COURT: You say in your disclosure that
19 he has one. But --

20 MR. BECK: Yes, you're right. Sorry.

21 THE COURT: All right.

22 MR. BECK: He does have a written report.

23 THE COURT: All right. Anything else on
24 Mr. Cain?

25 All right. Then the final one is Theodore

1 Chavez.

2 MR. BECK: And he has written a report.

3 THE COURT: And he has a written report.

4 Anything further on Mr. Chavez?

5 MS. SIRIGNANO: Your Honor, the same
6 question that we raised with Tiffany Smith. I don't
7 have -- I've got this report, but I don't know what
8 tests he performed on the firearm, all the backup,
9 the underlying data that he did to the firearm. The
10 firearm was modified. You know, what his expert
11 opinion is based on. And so I need that additional
12 information to back up the tests he performed on this
13 firearm.

14 THE COURT: Are you willing to produce
15 that, Mr. Beck?

16 MR. BECK: Yes, Your Honor.

17 THE COURT: All right. So that will be
18 produced. And that will satisfy the reasons and
19 basis requirement of Rule 16.

20 So with the understanding the Government is
21 going to produce some additional material on
22 Ms. Smith and Mr. Chavez, for the basis and reasons,
23 the reports will serve then otherwise as the
24 parameters of these individuals' opinions, basis and
25 reasons. And if the Government is going to call or

1 solicit any opinion beyond what's in the reports,
2 they will need to do a further disclosure on that.

3 So with that, I will grant in part and deny
4 in part any sort of request associated with the
5 United States' amended notice of expert witnesses as
6 it relates to the Rule 16 issues, and I will not,
7 with this motion, dispose of or address any other
8 expert issues.

9 All right. Anything else we need to take
10 up on the Rule 16 issue?

11 Let me get a little organized here so I can
12 get my materials back to Albuquerque.

13 MS. SIRIGNANO: Your Honor, if I could just
14 request a date to have these materials disclosed,
15 assuming I get this letter over to the Government
16 today.

17 THE COURT: Mr. Beck, when would those
18 disclosures -- what would you propose as a --

19 MR. BECK: Well, we'll get working on it
20 once we have her letter. I would say we'd need a
21 week from the date we receive the letter at least. I
22 think we need more, but I think a week is fair.

23 THE COURT: All right. Can you live with
24 that, Ms. Sirignano, that it will be one week after
25 the Government receives your letter?

1 MS. SIRIGNANO: Yes, Your Honor.

2 THE COURT: All right. So let's turn,
3 then, to Mr. Troup, Mr. Garcia's motion for
4 production of alleged co-conspirator statements and
5 for pretrial hearing on their admissibility. This
6 seemed to me to be about the same issues that we had
7 with Mr. Villa's motion.

8 Anything else we need to address on that,
9 Mr. Burke?

10 MR. BURKE: No. May I speak from here,
11 Your Honor?

12 THE COURT: As long as everybody can hear.

13 MR. BURKE: Your Honor, I have no
14 additional comments. You have addressed our motion
15 with your previous rulings.

16 THE COURT: All right. So it looks like
17 we're moving along. So I'm putting the Government on
18 notice that we're probably going to have a James
19 hearing this week while I'm down here.

20 All right. Anything else on Mr. Troup,
21 Mr. Garcia's motion?

22 All right. Let's go to the United States'
23 motion, notice and motion in limine to admit gang
24 expert witness and testimony. Again, this is seeming
25 like deja vu, but is it because it was in this case,

1 or was it in Mr. Garcia's case?

2 MR. BECK: Neither. It was in the PNM
3 case, United States v. Mauricio Varela, et al. We
4 were barreling towards Mr. Rodriguez.

5 THE COURT: All right. Well, let me
6 restate what I said. And then, Mr. Beck, you were
7 going to relook at the Government's position. So let
8 me sort of restate what I said sort of at the
9 beginning of the hearing.

10 It seems to me that with gang experts, and
11 people have identified them on both sides, so this
12 rule will cut the same way for both sides, although I
13 think the reality is it's the Government that wants
14 to put on a gang expert, and the defendants are
15 putting one on -- or more than one -- in rebuttal.
16 It seems to me that a gang expert can come in and
17 testify to how gangs operate in a generic sense; that
18 they can talk about some terms.

19 I think we all ought to look hard -- I
20 mean, our juries are fairly sophisticated. They know
21 a lot about organized crime and gangs, and those sort
22 of things, so they don't need a lot of education on
23 those. But I'm not precluding gang experts entirely,
24 because the Tenth Circuit hasn't precluded gang
25 experts entirely. But it does seem to me it clips

1 their wings in the sense that they cannot come in,
2 and because they worked at the prison, and they got
3 very familiar with the SNM Gang, come in and testify
4 about the SNM gang; that they can't talk and testify
5 specifically about that.

6 And so I'm anticipating that most of the
7 Government's case here about the SNM Gang, its
8 structure, its lingo, its tattoos, its mode of
9 operation, those things are going to come through
10 cooperating witnesses and other people.

11 It does seem to me -- and people are
12 welcome to argue on any of these issues, but
13 particularly this one -- the Government's expert
14 witnesses, since they're fact witnesses in part can
15 come in and testify how the Corrections Department
16 classified these people. I don't think they ought to
17 be saying: In my opinion so and so is a gang member,
18 but they can say that this is what we did at the
19 prison, we classified and put these people in as SNM
20 Gang members, and that's the reason they were in this
21 cell, in this unit and this prison. Sort of implied
22 in that is their opinion. But I don't think they
23 ought to be offering opinion testimony. They can
24 offer fact testimony as to what they did, what they
25 saw, what they observed. But the minute they shift

1 over to opinion testimony; that these people in their
2 opinion, that they're SNM Gang members, that they're
3 going to need to have some firsthand knowledge.

4 So a concern here is that most of these
5 experts, how they've accumulated their experience has
6 been through things that have been told to them. If
7 they can testify to what they've seen or heard
8 themselves, then they're fact witnesses. But to just
9 bring them in as opinion witnesses, and then have
10 them be a conduit for a lot of things that were just
11 told to them, I think the case law precludes that,
12 and should preclude that. And so those would be the
13 lines that I would draw.

14 I guess after I sort of gave that ruling on
15 the PNM case, you were going to take a harder look at
16 the Second Circuit's case, Tenth Circuit cases. Can
17 you live with what I'm saying, Mr. Beck? Or do you
18 want to --

19 MR. BECK: Well, I can, Your Honor, to a
20 certain extent. I think Your Honor is right.

21 I went back and looked at United States
22 against Garcia, and that's 793 F.3d 1194. It's a
23 case out of the Tenth Circuit, in 2015. And it cites
24 heavily from the Second Circuit's decision in Mejia.
25 And, generally, I think the outlines the Court gave

1 is correct. I think last time, in PNM, what was
2 maybe a little bit too restrictive was saying that
3 the experts can't testify to the SNM Gang.

4 I think that, if we look at the Garcia
5 opinion -- and I'm looking at page 1213 of the
6 Federal Reporter 3rd -- it says that, "Expert
7 testimony about a gang's history, territory, colors,
8 hand signs, graffiti use, naming practice, tattoos,
9 structure, membership rules, and similar sociological
10 evidence can assist the jury in understanding and
11 evaluating the evidence considering the specific
12 crimes charged. But there is no sociological
13 expertise in testifying to gang members' specific
14 travels, specific uses of gangs funds, or commission
15 of specific crimes."

16 So I think what the Tenth Circuit is saying
17 there is that it's okay to talk in generalities about
18 a gang. It's not okay to talk about specific
19 instances of gang conduct.

20 And I think that falls in line with what
21 the Court is distinguishing here, in just parroting
22 hearsay testimony. When the officer -- when the
23 experts, as corrections officers, testify to certain
24 events that they didn't perceive, that they only
25 heard secondhand, certainly that's inadmissible

1 hearsay testimony.

2 When they're talking about gangs in
3 general, New Mexico Corrections Department gangs, and
4 even the SNM that's, under the Tenth Circuit's
5 classification, admissible expert opinion. And the
6 reason for that is that their experience, through
7 what they've seen, and through different seminars and
8 classes they take on gang culture, they become
9 experts in identifying gang symbols, including the
10 SNM symbols, Los Nortenos, et cetera.

11 So when we use experts, they're able to
12 filter through inadmissible evidence, come up with
13 their own opinions based on their knowledge,
14 expertise, and then give their opinions. So I think
15 it's permissible to have these experts testify to
16 specific tattoos associated with the SNM. And I
17 think this goes along with how they classify certain
18 inmates as SNM members, and one of their indicators
19 is SNM tattoos.

20 So I think, if the Court looks closer at
21 the Garcia opinion's outlines and what is permissible
22 and what isn't permissible, I think the Court will
23 correctly conclude that certain testimony about the
24 SNM's operations is okay, as long as they don't get
25 into specific crimes or instances of conduct or

1 operations of the gang.

2 THE COURT: Other than tattoos, what can
3 you think of that you would want these experts to
4 testify that you think I'm being too restrictive on?

5 MR. BECK: There is certain slang terms I
6 can think of, the ways in which members identify and
7 talk with other members of the SNM; code words that
8 they use. It may be -- I don't know whether it's
9 unique to just the SNM, but I know it is a way that
10 they associate, folks with the SNM, the way that the
11 SNM operates.

12 THE COURT: Would you want the expert just
13 to testify that a lot of gangs use slang words to
14 communicate, or are you wanting your expert to
15 specifically talk about how SNM Gang members
16 communicate? See, I can live with your expert --

17 MR. BECK: Right.

18 THE COURT: I'm not -- this is my
19 preliminary ruling -- I'll certainly hear from the
20 defendants -- I think I can live with your expert
21 coming in and saying: One of the ways that we
22 identify who is in what gang, for placement,
23 classification, those sort of things, is tattoos.
24 And I think I could also live with the fact that your
25 expert is going to come in and say: One of the ways

1 that gangs communicate is through slang. I think
2 those are some things that maybe not all jurors are
3 going to know. I think some might, some might not.
4 So I think it's an area that an expert could assist.

5 I guess I would expect, though, somebody
6 else is going to tell us what are the SNM tattoos,
7 and what are the SNM slang? Can you live with that?

8 MR. BECK: I think that's too restrictive.
9 Because, again, looking at the language in Garcia,
10 expert testimony about a gang's history, territories,
11 colors, hand signs, graffiti use, naming practice,
12 tattoos. A gang's tattoos, a gang's naming practice.
13 And so what we're talking about is the way particular
14 gangs operate.

15 And if we're talking about the way they
16 identify gang members, I don't expect they're going
17 to testify that if someone has a tattoo, then they're
18 classified as an SNM member. I think it's a specific
19 tattoo. I expect that it will be SNM tattooed on
20 their body, with the Zia symbol, among other tattoos
21 that they use to identify SNM members.

22 But, again, I don't know that they'll get
23 into that level of detail. What I'm saying is that
24 there may be certain language. I think the carnal as
25 an example, I think that's a way that SNM members

1 refer to other SNM members. I don't know if that's
2 exclusive to the SNM, or if other prison gangs or
3 gangs also use that. But I expect that they will
4 testify about that and give their opinion that that
5 would indicate that someone is an SNM member, as
6 opposed to being an associate or another member.

7 I think that based on Garcia that's
8 appropriate. I think if they came in and said that,
9 In 2007, Mr. Baca sent a letter to another SNM member
10 that said, Carnal -- and that's what we used to
11 identify him and classify him as an SNM member --
12 that may be inappropriate, that may be hearsay
13 testimony they cannot come in. I mean, I guess we're
14 not offering it for the truth of the matter asserted
15 in that case, but rather, why they're classified as a
16 gang member.

17 But I think that's where Garcia talks about
18 specific instances of gang conduct, is that they
19 would be referring to hearsay testimony that they
20 didn't perceive; that they didn't use that knowledge
21 and expertise to come up with that opinion.

22 THE COURT: All right. Other than tattoos
23 and slang words, what else do you think I'm drawing
24 the line too tightly for your experts?

25 MR. BECK: I think they can talk about

1 recruitment methods that gangs and the SNM use. I
2 think they can talk about communication methods that
3 the SNM uses, the gangs use. I think that would be
4 like hand signs in Garcia. I think they can talk
5 about the types of crimes that SNM members engage in.
6 I think they can talk about the membership rules.
7 And I think they can talk about the structure and how
8 they validate other SNM members. I think history and
9 territory in Garcia comprehends rival gangs to the
10 SNM, both within and without New Mexico Corrections
11 Department. Then -- I think I said this, but I'm not
12 sure -- where Garcia says "expert testimony about a
13 gang's history is helpful," they could testify about
14 the SNM's history.

15 THE COURT: Well, it sounds like to me
16 you're pretty much strongly disagreeing with my
17 proposed ruling.

18 Mr. Hammond, why don't you grab my glasses.
19 This is pretty small print for me to look at.

20 All right. Anything else you want to say
21 about my proposed rulings?

22 MR. BECK: I think that's it, Your Honor.

23 THE COURT: All right. Thank you, Mr.
24 Beck.

25 Mr. Castle, I think Mr. Garcia was the one

1 that took the lead on this. Let me first ask, the
2 line I was drawing, how did you feel about that line?

3 MR. CASTLE: To be completely frank, I'm
4 not quite sure where the line is, because I hear the
5 Government, and they kind of construe it different.

6 THE COURT: Well, that's their line.

7 MR. CASTLE: Right.

8 THE COURT: I'm talking about the line I
9 drew, which is that the gang experts can talk about
10 gangs in general. I mean, they can certainly talk
11 about: Tattoos is often a way that gangs identify
12 themselves. They did talk about slang words,
13 communication. They can talk about crimes in
14 general, without specifically, you know, talking
15 about the SNM Gang.

16 MR. GRANBERG: Your Honor, I apologize for
17 interrupting. I was wondering if the Court would
18 permit Mr. Chavez to use the restroom, please.

19 THE COURT: Tell him to wait about 15
20 minutes. Then we'll take a break. All right.

21 MR. CASTLE: Generically, about gangs, I
22 could understand why there might be need for a jury
23 to hear about why gangs generically use slang terms
24 and tattoos. I'm not sure you need to do it through
25 an expert. Because the concept of experts is where

1 they can't -- a jury can't draw those conclusions
2 from actual lay testimony. I imagine that the
3 Government has a number of inmates who are going to
4 be able to come before the Court and tell the jury
5 that the SNM Gang uses tattoos. And we identify
6 ourselves by our tattoos. And we use slang terms to
7 mean the following. I'm not sure why you need an
8 expert at all. Because this is not something that's
9 so complicated the jury is not going to understand,
10 you know, one of these informer witnesses saying:
11 This is what we do.

12 This is not an area of expertise. I
13 understand the Tenth Circuit has talked about it, but
14 I think more in the context of more drug cases, such
15 as this Court dealt with in the Rodriguez decision,
16 where perhaps certain words you're overhearing on an
17 audiotape between members. There is a need to do it
18 there, because -- let's say that this was a drug --

19 THE COURT: Hold on just a second, Mr.
20 Castle. Where -- give me the language you were
21 referring to --

22 MR. BECK: The paragraph that starts on
23 page 1212 and goes through page 1213.

24 THE COURT: I don't have the full opinion,
25 so -- what page is it?

1 MR. BECK: The language that I was
2 referring to starts -- it's the first full sentence
3 on page 1213. "Expert testimony about a gang's
4 history, territory, colors," then continuing
5 throughout that paragraph. I read you that sentence
6 and the next sentence, omitting the citation.

7 THE COURT: Are you using Lexis rather than
8 Westlaw?

9 MR. BECK: I'm using Westlaw.

10 THE COURT: Okay. I'm having a hard time
11 matching your pages up. I've got page 717, so I
12 don't have any --

13 MR. BECK: Page 717 is not included in this
14 Garcia opinion.

15 THE COURT: Okay. All right. Go ahead,
16 Mr. Castle.

17 MR. CASTLE: Yes, Your Honor.

18 I'll actually jump start right where the
19 Government just left off. In that exact page they
20 indicate that, "There is no sociological expertise in
21 testifying to gang members' specific travels,
22 specific uses of gang funds, or commission of
23 specific crimes. When the experts' testimony on such
24 matters is not based on personal knowledge, but on
25 testimonial hearsay, the testimony violates not only

1 the rules of evidence but also the confrontation
2 clause."

3 But going back to the original question
4 from the Court is: Could I live with the Court's
5 order? You know, I don't believe -- we're probably
6 in disagreement with that, if it's generic. But when
7 you get to the specifics of the SNM Gang, I believe
8 that's a problem.

9 So if that's where the Court is drawing the
10 line, you're going to talk about gangs generically,
11 whether it be a street gang, a prison gang, things
12 like that, I don't have any heartburn over that. But
13 when you get to the specifics, I believe that is
14 absolutely going to be based upon the testimonial
15 statements that they've obtained from other gang
16 members or other officers over a period of time.

17 THE COURT: Well, what do you do with this
18 language that Mr. Beck is relying on, that indicates
19 that the Tenth Circuit in Garcia said "a gang," so it
20 seemed to allow some expert testimony by an expert
21 witness about a gang?

22 MR. CASTLE: Well, it I guess depends on
23 what the source of that information is. Because
24 right after that particular sentence, they go on to
25 talk about, if the basis of your knowledge as an

1 expert is testimonial statements of others, then it's
2 not admissible. So you can't take the sentence in
3 isolation. That's what they're doing. They're
4 leaving out the analysis below, which is the
5 confrontation analysis.

6 And I would invite the Court possibly to
7 proceed in the method it did in the Rodriguez case,
8 which for the record, the citation is 120 F.Supp. 3d
9 1216. In that case -- which coincidentally were with
10 these prosecutors and with Agent Acee -- the Court
11 said, Let's put the expert on the stand, find out the
12 specific opinions, and then find out what the source
13 of their knowledge is, so that we can determine
14 whether it's in violation of various rules of
15 evidence. In that case there was no objections on
16 the confrontation clause. I don't believe there were
17 really objections under various other rules that I've
18 raised. But there were a lot of them. And the Court
19 restricted significantly the areas of expertise.

20 THE COURT: And whose opinion is Rodriguez?

21 MR. CASTLE: That's yours, Your Honor. And
22 the Court in that case stated -- the Court then held
23 an evidentiary hearing to examine Acee; the dual
24 purpose of calling Acee established to analyze his
25 expertise pursuant to Daubert, and to allow

1 Rodriguez, the defendant, to fully cross-examine Acee
2 on his testimony, thus alleviating any deficiencies
3 in the Rule 16 notice. So it was combined issue
4 there.

5 THE COURT: Was Rodriguez the case out of
6 El Paso, where they came -- okay. Well, was Mr. Acee
7 testifying as an expert in that case?

8 MR. CASTLE: Yes, he was. And it was out
9 of El Paso. And it was concerning a cartel out of
10 Mexico, and how they operated.

11 THE COURT: But was he testifying as an
12 expert?

13 MR. CASTLE: Yes, he was.

14 MS. ARMIJO: Our expert, Your Honor.

15 MR. CASTLE: So that's what I think we need
16 to do. Because, otherwise, this is kind of
17 nonspecific.

18 For example, the Court indicated that it
19 was inclined to allow the expert to testify about
20 corrections classifications. And I believe that the
21 Court was saying individual SNM Gang members, the
22 defendants.

23 THE COURT: Well, here's what I was saying
24 on that: It seemed to me that these corrections
25 officers, these three experts, do have some

1 possible -- they do have some -- in fact, it seems to
2 me that that's probably their greatest value is that
3 they are fact witnesses.

4 I guess I have trouble -- I guess I have
5 some concern about them testifying that in their
6 opinion Mr. Garcia is an SNM Gang member. But if
7 they testify that the Corrections Department
8 classified Mr. Garcia as an SNM Gang member, and
9 that's the reason they had him in this facility, it
10 seemed to me that was okay. I mean, implicit in that
11 is they made a determination. But that's something
12 they did, and they acted on it. That seems to me to
13 be different.

14 MR. CASTLE: Well, with all due respect, I
15 disagree. And I'll explain why. If one of these --
16 I don't want to call them experts -- these three
17 witnesses; if they're testifying as fact witnesses,
18 they're not an expert. They're testifying, and they
19 say, I talked to Billy Garcia; Mr. Garcia told me he
20 was a member of the SNM Gang, then that's
21 permissible.

22 If what they're doing is reading from a
23 document that -- where someone else has classified
24 Mr. Garcia as an SNM member, frankly --

25 THE COURT: Did you say it's impermissible

1 or permissible?

2 MR. CASTLE: That would be permissible.

3 THE COURT: Okay.

4 MR. CASTLE: If they're testifying that
5 they looked at a classification document and it says
6 Mr. Garcia is an SNM member, my position is that's
7 hearsay, but also --

8 THE COURT: I'm agreeing with you.

9 MR. CASTLE: Okay.

10 THE COURT: On those two points, you and I
11 are in agreement. But it seems to me, if PNM, for
12 example, if it classified him as an SNM Gang member,
13 that's a fact. You can explore the basis for it, or
14 whatever, but that's a fact, they classify him as a
15 gang member. And they may have put him into either
16 segregation or a particular unit or a particular
17 prison because of that classification. Those are
18 facts. It may be right or wrong. They can't -- but
19 these men -- these three experts can't come in and
20 say: In my opinion, Mr. Garcia is a gang member.
21 They can't do that. But it's a fact that they
22 classified him as an SNM Gang member, and that may
23 have affected his classification and where he was
24 housed in segregation. Those are facts.

25 MR. CASTLE: Well, my argument is that if

1 it's being offered for the truth of the matter, if
2 it's being offered, not to show why he's in a
3 particular cell or block, but it's being offered to
4 show that he's an SNM member, they need to call the
5 witness that --

6 THE COURT: Well, it is being offered for
7 that purpose because it is some evidence that the
8 world views these people as SNM Gang members. It's
9 not the definitive one. It's just some evidence.

10 MR. CASTLE: Right. And I think they need
11 to call the person who has actual percipient
12 knowledge that Mr. Garcia is an SNM member; not based
13 upon some document that they've reviewed, that
14 someone else compiled. And we have no idea how they
15 compiled it; whether it was for the purposes of law
16 enforcement, which likely is the purpose, that would
17 make it within the core area of testimonial
18 statements that Crawford and its progeny say is
19 impermissible to enter in trial.

20 Now, I think they're going to be able to do
21 this independently through legitimate means. They're
22 going to call somebody who is going to say: I'm a
23 member of the SNM Gang, and I know Billy is, because
24 we talked about it together and he's a member. And
25 they're going to be able to do it.

1 But to have a witness from the Department
2 of Corrections come in and read, essentially from
3 another document or classification document, I
4 believe is in violation of the confrontation clause.

5 I would indicate -- one of the things that
6 I think is a little different about this case than
7 Garcia and the Rodriguez case that this Court
8 presided over is that we have a very unique
9 situation, which I haven't seen addressed. And that
10 is the Government's experts, three experts, work for
11 one of the victims. They're employed by the victim.
12 And one of the things that I think the Court can take
13 into account on whether it permits these three
14 individuals to testify as experts, as opposed to
15 percipient witnesses is that fact. Is this really
16 the proper role of an expert, is to have a victim,
17 essentially, be able to employ experts that are
18 presented before the Court?

19 The other areas that I believe that the
20 Government had talked about, at least today, and also
21 addressed in their motion, they wanted specific
22 evidence about how the SNM Gang operates. I believe
23 that that would be based upon testimonial hearsay.
24 The particular code words that the SNM used; the only
25 way that these three individuals know that is

1 somebody told them. Unless they're a member, a
2 former member of the SNM. The only way they'd know
3 it is if they interviewed SNM members. That's a
4 testimonial statement they're relying on.
5 Communication reference is the same. The types of
6 crimes that SNM members commit; there is a particular
7 danger in that. And I know the Court is probably
8 with me on that.

9 So if the Court is ruling that way, but
10 that actually goes to mental state of -- there is a
11 dual mental state in VICAR prosecutions. One is the
12 mental state of the underlying offense. But there is
13 also a second mental state, which is that they have
14 to say that that crime was committed for the purpose
15 of maintaining their position, et cetera, in the SNM
16 Gang. That's a second mental state. And I believe
17 Rule 704 prohibits expert testimony on that
18 particular area. So if they're bringing up these
19 crimes that are being committed for the purpose of
20 maintaining their position in the SNM, they're really
21 commenting on a defendant's mental state, which is
22 prohibited under 704.

23 So, you know, what I -- I could go through
24 the rest of these areas. But if the Court is not
25 going to allow them to put in evidence of it, then I

1 don't need to continue. But I do think there is a
2 considerable concern that, frankly, all the areas of
3 expert testimony that's being offered is all based
4 upon testimonial out-of-court statements of inmates
5 that have been interviewed over the years by these
6 officers.

7 I see someone standing.

8 THE COURT: Well, let me do this: We'll
9 take a break. Let me put the proposal on the table,
10 because -- here is -- looking at the statement that
11 the court -- the Tenth Circuit made in Garcia, Judge
12 Hartz, I don't have any disagreement that expert
13 testimony about a gang's history, territory, could be
14 helpful to the jury. But I think that only -- I
15 don't disagree with that. I mean, that's the kind of
16 stuff that I think an expert could help on. But
17 that's a totally different question as to whether the
18 expert can testify to that.

19 And I think Mr. Castle is correct -- and
20 this is what's prompted me to draw the line where it
21 is -- he's saying that there is no sociological
22 expertise in testifying about specific things. And
23 he says: When the experts' testimony on such
24 matters -- now, the question is does that just relate
25 to the prior sentence, or does it relate to the

1 sentence going back, is not based on personal
2 knowledge but on testimonial hearsay, the testimony
3 violates not only the rules of evidence but also the
4 confrontation clause.

5 It doesn't seem to me to make sense to say
6 one category has to comply with those, but these
7 others, they're helpful, but they don't have to
8 comply with the confrontation clause or the rules of
9 hearsay. I don't think that's what Judge Hartz is
10 saying. And so I'm not -- I'm inclined not to adopt
11 that reading of his ruling. And what you've really
12 got to go back to is Judge Hartz -- you can correct
13 me if I'm wrong -- was really relying on the Second
14 Circuit's opinion in Mejia. So I'm drawing the line
15 where the Second Circuit draws it in Mejia. And I
16 think that's consistent with what Judge Hartz is
17 saying.

18 And so here's what I will do: We'll come
19 back and argue this -- if anybody else wants to speak
20 on this -- the experts are not going to be able to
21 really talk about the SNM case -- gang specifically.
22 They can talk generally about gangs. The fact that
23 SNM comes out of their mouth as they talk about other
24 gangs I don't think is important, but they can't
25 specifically talk about the SNM Gang and offer

1 testimony on that. They can talk about a gang.

2 If, on the other hand, the Government wants
3 to push that and have them particularly, say, the
4 tattoos, they really want the experts to testify
5 about tattoos rather than something else, then I'm
6 going to have to go back to the procedure I used in
7 Rodriguez. You'll have to identify those, and then
8 we'll have to have a hearing where those three
9 experts come in, and then I listen to what the basis
10 of their opinion is, and then make balls and strikes
11 calls on an individual basis, and we'll script it
12 out.

13 So I think that's going to have to be the
14 sort of dividing line, and that will have to be the
15 procedure we're going to use on those three experts
16 if they want to get into some areas that I know the
17 Government wants them to get into. You'll have to
18 make a judgment as to whether talking to them, you
19 think you can satisfy -- they satisfy hearsay and the
20 confrontation clause issues.

21 All right. We'll be in recess for about 15
22 minutes.

23 (The Court stood in recess.)

24 THE COURT: All right. Mr. Benjamin, are
25 you here and ready to enter an appearance?

1 MR. BENJAMIN: Your Honor, Brock Benjamin
2 on behalf of Mr. Joe Gallegos.

3 THE COURT: All right. Mr. Benjamin, good
4 morning to you.

5 All right. Well, I've been looking at the
6 break at United States v. Pablo from the Tenth
7 Circuit; then looking at Judge Tymkovich's opinion on
8 the Sandoval case, I think. I thought I had it here.
9 It's an unpublished opinion. Is that Sandoval;
10 Tymkovich, is that Sandoval? I've been looking at
11 Garcia and looking at Mejia. I guess I'm fairly
12 comfortable with where I'm drawing the line.

13 So let me go to the defendants. Mr.
14 Castle, are defendants comfortable with where I'm
15 drawing the line?

16 MR. CASTLE: I believe so. What I'm not
17 comfortable necessarily with is what the Government
18 is going to be offering as percipient witness or fact
19 witness testimony in this regard. I think it's -- I
20 tried to resolve this prior -- during the break --
21 and apparently what the Government wishes to do is
22 put their experts on, and have them indicate what it
23 is they're going to testify about, some of which will
24 be percipient fact witness testimony, some of which
25 will be expert testimony. I think it's good that we

1 figured that out right off the bat, and find out
2 whether it's admissible or not. If any of these
3 witnesses are allowed to testify as both an expert
4 and as a percipient witness, I believe that that's
5 going to have to be delineated for the jury as well.

6 But the problem is, their notification --
7 their actual motion, I think it was 1299 -- it's
8 really hard to understand whether the basis of their
9 individual's testimony is something they perceived
10 personally, or whether it's -- it was all couched as
11 expert testimony, but it only says one opinion -- so
12 I am very comfortable where the Court is drawing its
13 line. But with regards to specific areas that
14 they're going to be getting into, I think we're going
15 to have to just analyze it as it's presented at the
16 hearing.

17 I noticed that the Court in Rodriguez at
18 the hearing told the prosecutors to put their expert
19 up, and let's have the defense cross-examine.
20 Because of that -- what I read in Rodriguez, I asked
21 the Government to have their experts here; gave them
22 Touhy letters, and told them the areas in which I was
23 going to cross-examine. I don't believe they brought
24 them. But I think we could certainly get them up
25 here tomorrow. And I think we could go on that

1 process, and we could have a definitive ruling.

2 THE COURT: All right. Thank you, Mr.
3 Castle.

4 MR. CASTLE: Thank you.

5 THE COURT: Any other defendants want to
6 speak on this issue? Everybody pretty comfortable
7 with where I'm drawing the line? Mr. Villa?

8 MR. VILLA: Judge, I'm comfortable.

9 I think a couple of things that come up, I
10 think with the Court's ruling, one of the main
11 objections that we had on behalf of Mr. Perez was the
12 experts testifying that SNM is an enterprise. It
13 sounds like the Court would not permit that.

14 But if we're going back to the generic
15 testimony, if you will, about gangs or that sort of
16 thing, I think we would want the Court to make a
17 ruling that they can't testify that gangs are an
18 enterprise or gangs are engaged in racketeering
19 activity. I mean, if they testify about the facts
20 they've observed, I think that's different. But
21 getting to that ultimate issue, I think, is important
22 for the Court to address, even if it's in generic
23 fashion.

24 The other two pieces which I think maybe
25 the Court is going to get to is, of course,

1 challenges to these witness' qualifications, whether
2 they can even testify about gangs in the generic
3 fashion. And then I think -- you know, there is
4 three of them, so are they covering the same ground?
5 Are they going to be offering different testimony?
6 Is it cumulative? So those are the issues that I
7 think perhaps the Court is getting there, but I
8 wanted to address.

9 THE COURT: Well, it would seem to me --
10 and I haven't heard Mr. Beck, and I haven't read
11 anything where they're going to testify that this is
12 an enterprise or this is racketeering activity,
13 whether they would offer opinions that the gangs are
14 enterprises. It seems to me those are legal
15 conclusions that would be left for the jury to
16 determine after I give them jury instructions to tell
17 them how to determine those.

18 So I'll hear from Mr. Beck in a moment.
19 But I would think that the experts would not be
20 testifying about whether gangs in general, or SNM in
21 particular, are an enterprise, and whether they're
22 engaged in racketeering activity, again, generally or
23 specifically. I wouldn't think that would be
24 appropriate for the expert. If the expert is going
25 to testify that gangs commit crimes to advance their

1 purposes, I would think that would be the general
2 testimony that a gang expert could provide.

3 What else did you say? What other areas
4 did you --

5 MR. VILLA: So the other challenges that we
6 had raised in our brief were the qualifications of
7 these particular experts.

8 THE COURT: I guess I don't think that's a
9 Daubert issue. I think that's a qualification issue.
10 I don't know how and when you raise it. But I didn't
11 see anything glaring here that would cause me to not
12 think that these people were qualified. But, you
13 know, I'll let you argue that. But nothing jumped
14 out at me saying these people weren't qualified to be
15 general gang experts. You've got people that are
16 former gang members, prison officials.

17 I'm looking and comparing the ones that the
18 defendants brought in, it seems to me that they're
19 all kind of the same genre, and it's fairly broad as
20 far as gang experts.

21 What was other area?

22 MR. VILLA: I think the cumulative nature
23 of their testimony. There is three of them. The
24 notice says they're going to testify to basically the
25 same thing, the way I read it. And so I'm not sure

1 what the purpose of the three of them are.

2 I think the qualification issue may answer
3 some of that. You know, one of the guys appears to
4 have a lot more experience as a higher rank. A few
5 of these folks are, you know, a little bit lower
6 ranking. I mean, if I get hired at DOC tomorrow, and
7 in two years I'm a sergeant in STIU, does that
8 qualify me as a gang expert for this case? And I
9 think that's some of the folks we might be dealing
10 with.

11 THE COURT: Okay. All right. Thank you,
12 Mr. Villa.

13 Anyone else on where I'm drawing the line?

14 MS. JACKS: If I may, Your Honor.

15 THE COURT: Ms. Jacks.

16 MS. JACKS: Our document is 1345, and it
17 was our objection to the Government's Rule 16 notice.
18 And I think the Court was asking just a few minutes
19 ago: Where is it that we asked for the
20 qualifications, the specific opinions, and the basis
21 for those opinions. And this is with Rule 16.

22 So I think, even if the Government is going
23 to be permitted to call, perhaps, one or more of
24 these witnesses as a more generalized generic gang
25 expert, I still think we're entitled to know what the

1 witness' qualifications are and what their specific
2 opinions are and the bases of those opinions. So --

3 THE COURT: Well, you have the resumes of
4 all three; correct?

5 MS. JACKS: We actually don't. I think all
6 we have is, in the text of the Government's notice
7 about the gang experts, they recited some of what I
8 think they believe their qualifications were. But
9 it's nothing to the degree of a CV. And we don't
10 have specific -- at least at this point -- the
11 generic opinions that the Government would be
12 proposing to offer. And we don't have any specific
13 information about the bases of those opinions.

14 THE COURT: Well, if the Government calls
15 these witnesses -- we do the Rodriguez procedure --
16 that's going to satisfy the Rule 16 issues; correct?

17 MS. JACKS: You mean do it outside the
18 presence of the jury prior to the testimony?

19 THE COURT: Yes.

20 MS. JACKS: It does in part. I think the
21 part that I don't think it satisfies is I think we're
22 entitled to -- the opportunity to prepare and to
23 assemble materials to counter these witnesses'
24 opinions and specific bases for those. And that's
25 not really something that we can do on the fly. And

1 I think that's why we had that expert disclosure date
2 so far in advance of the trial date.

3 I mean, there is thousands of pages. There
4 is a vast array of information that we might want to
5 access to prepare to cross-examine those witnesses.

6 THE COURT: Well, let's see how it goes.
7 If you -- after we have them testify, if there is
8 still some problem with the basis and reasons or
9 qualifications, we can take it up at that point. But
10 I think at the present time you're about to get a lot
11 of basis and reasons. And we'll have to sort through
12 those and see if it's still inadequate.

13 All right. Anyone else on where I'm
14 drawing the line on the defendants' side?

15 All right. Mr. Beck, your thoughts on
16 anything else here where I'm drawing the line?

17 MR. BECK: No. I mean, I think I've made
18 my position clear. And I understand the Court's
19 position.

20 We have not received Touhy letters for any
21 of our witnesses. And they have the CVs for the
22 three --

23 THE COURT: They got CVs for the three?
24 Because they were complaining about -- I can't
25 remember which it was, but they were complaining that

1 they hadn't received them for some of these gang --

2 MR. BECK: I think it was very recently. I
3 think it was the last production.

4 THE COURT: Okay.

5 MR. BECK: We don't intend to elicit
6 testimony that the SNM is a racketeering enterprise.

7 THE COURT: Okay.

8 MR. BECK: And I think -- I can't remember,
9 there was a fourth.

10 THE COURT: The cumulative.

11 MR. BECK: Thank you. The cumulative.
12 That was the fourth one. We don't intend to put all
13 three of these witnesses on in each trial. There are
14 a lot of trials coming up. And since all three of
15 them are qualified, based on their experience and
16 training, we list them as experts, but we don't
17 intend to elicit cumulative expert testimony.

18 THE COURT: Okay. To satisfy the basis and
19 reasons for the opinion, so that I can do my job of
20 making sure that they're not just parroting hearsay
21 or confrontation clause testimonial --

22 MR. BECK: I think you just made your job
23 on that a lot easier. I mean, with the breadth of
24 the opinions that they're limited to, they're going
25 to be able to testify based on their experience and

1 knowledge.

2 THE COURT: Are you going to try to -- for
3 example, are you going to try to have them testify
4 about tattoos, slang words, communication methods,
5 recruitment methods, hand signals, membership rules,
6 crimes that they commit, structure; those items?

7 MR. BECK: Well, I mean, it seems that the
8 Court has already staked out its ground on that, that
9 we're going to ask them: Do prison gangs use hand
10 signals or communication tools? Sure.

11 THE COURT: Well -- and I thought you
12 were -- correct me if I'm wrong -- maybe we have an
13 agreement here, I thought you were saying you still
14 wanted to try to get these experts to testify on
15 these areas, and you were ready to go through the
16 procedure we used in Rodriguez to try to establish
17 that they obtained their information in some way
18 other than in a hearsay or a testimonial. But it
19 sounds like maybe you're not. So you're willing to
20 live with the line I've drawn? I understand you
21 disagree with it, but if you're willing to live with
22 the line I've drawn, then it doesn't seem to me we
23 need to have a Rodriguez procedure in which they're
24 called to testify.

25 MR. BECK: Okay. So I think we're in

1 agreement on all of those. I think it sounds like
2 the Court -- as I understand the Court -- it made its
3 decision, but it's not ordering that at this point.
4 It's going to look at the issues further and take it
5 under consideration. Because it's doing that, the
6 Court would allow us to go through Rodriguez
7 procedures to try to get any opinions that we believe
8 are proper.

9 THE COURT: Well, I think given the place
10 we are, what I'm ordering -- what I'm saying is going
11 to have to be the order, and we're going to have
12 to -- it's going to have to be the order if we go to
13 trial. I'll leave here today or tomorrow or
14 Wednesday, and try to get from y'all, everybody, what
15 you want me to look at and write an opinion on, and
16 take a second look at, or evaluate more closely.

17 But given the number of issues here,
18 unless -- I think this has to be the order. And so
19 now I need to know whether you want a Rodriguez
20 procedure to try to get in additional information
21 from the experts, or you're willing to just say
22 they'll testify generally about gangs, but you're not
23 going to try to get specific information about the
24 SNM Gang through these three experts.

25 MR. BECK: Okay. May have a moment, Your

1 Honor?

2 THE COURT: Okay.

3 (Conferred.)

4 MR. BECK: Your Honor, may we put off the
5 Rodriguez-type hearing until after lunch; at that
6 time come back and either do the hearing or tell you
7 that we don't need it?

8 THE COURT: Okay. That's fair enough. I
9 think we've got enough going on here. So I'll put it
10 off for the present time. I can't tell you about the
11 timing here, but we'll put it off for the present
12 time and let you make a more informed decision.

13 MR. BECK: Understood.

14 THE COURT: Let me come back to you,
15 Ms. Jacks. If the Government says: We disagree with
16 you, Judge; we think we could get more in through
17 these experts legally under the Tenth Circuit law
18 than what you're allowing us, but we'll live with it;
19 in other words, we're not going to call these experts
20 to talk specifically about the SNM Gang, what else do
21 you need from a Rule 16 standpoint, or from a
22 qualification standpoint -- I'll come back to you,
23 Mr. Villa, as well on this, so be thinking of this
24 question -- for these three people to testify to the
25 general gang testimony that I'm allowing?

1 MS. JACKS: What I would like -- it sounds
2 like we've got the CVs in the most recent disclosure.

3 THE COURT: Right.

4 MS. JACKS: So that would probably satisfy
5 me on that basis.

6 With respect to the opinions, I'd still
7 like to know what the specific opinions they're going
8 to offer are, and what they're based on.

9 THE COURT: Let me -- stay right there.
10 Mr. Beck, there has not been an opinion -- there
11 hasn't been reports on these three, right?

12 MR. BECK: They have not issued written
13 reports.

14 THE COURT: How -- if there is no summary
15 at the present time of their opinions, then the
16 reasons and basis for those opinions, how do you
17 propose to address that concern?

18 MR. BECK: Well, I think -- so the problem
19 is, is that their opinions are expressed in the
20 notice and motion in limine. Now, given the Court's
21 ruling, I think a lot of those opinions are going to
22 be excluded. So we would have to go back and talk to
23 them about what their opinions would be under the
24 framework that the Court articulated here.

25 I think -- as Your Honor said, I think

1 looking at their CVs, looking at their
2 qualifications, and looking at the opinions that
3 they're going to be able to offer at trial, it's not
4 really a close call whether they're qualified to give
5 opinions about prison gangs, when they've worked in
6 the prison system for years, and seen the way
7 multiple gangs operate.

8 I understand that sort of the sticky place
9 we're in now that there isn't -- I guess there isn't
10 really an effective Rule 16 disclosure for the
11 Court's order on this. And I think that's something
12 that the United States will have to work with the
13 defense team to come up with a solution for. I think
14 one can be reached. I think we can draft a similar
15 Rule 16 disclosure to what we have in there, where
16 they give the generic-type opinions this Court will
17 allow at hearing.

18 And I think those -- to the extent that the
19 defense feels there is a need to explore those on
20 cross-examination, I think that's a perfectly
21 appropriate place.

22 THE COURT: Well, if you come back from
23 lunch, and you say, Okay, we can live with where the
24 Court is drawing the line, and so we don't have to do
25 a Rodriguez procedure, would the Government be

1 willing to produce, within a certain amount of time,
2 with these three experts, a summary of the
3 opinions -- I would expect -- what I'm envisioning in
4 my head is bullet points. You bullet point what now
5 you want these people to talk about as far as prison
6 gangs or gangs in general, and then something in the
7 way of reasons and basis for those opinions? And
8 this is what I would expect it to be, is that, you
9 know, what they have done to formulate that opinion;
10 that they explain to the defendants how they have
11 formed those opinions.

12 MR. BECK: Well, I think -- so for the
13 first part of that, sure. Maybe seven days after
14 Your Honor issues the order saying what the opinion
15 will be, then we could write those opinions.

16 I'm being sort of facetious on that.

17 We can put together a list of opinions, if
18 that's the course we're pursuing.

19 On the second part of that, I think the
20 case law is pretty clear that, with these law
21 enforcement type experts, drug activity, law
22 enforcement type experts that saying their experience
23 and observations and working for the Corrections
24 Department over the last couple of years form the
25 basis of this opinion is sufficient to meet Rule 16

1 requirements.

2 THE COURT: Okay. Can you live with that?

3 MS. JACKS: I think it would depend on what
4 the opinions were, whether I would agree.

5 THE COURT: All right. Well, let's take it
6 a step at a time. Let me get the opinions in your
7 hands. You've got the CVs. And they can probably
8 put a paragraph together saying it's based on their
9 experience working in prisons. I tend to agree
10 that's probably where we are. And I think that's
11 probably going to apply to defendants' experts as
12 well as the Government's experts. So let's see if we
13 can work with that.

14 Thank you, Ms. Jacks.

15 Before I hear from you, Mr. Castle, let me
16 hear from Mr. Villa. Now, we've got -- assuming the
17 Government comes back and says they can live with
18 where I'm drawing the line, you've got the CVs;
19 you're about to get the bullet points of opinions
20 they're going to offer on the general prison gang;
21 it's based upon their experience that's stated in the
22 CVs. Anything else on that?

23 MR. VILLA: I don't think so. Nothing is
24 popped into my mind, Your Honor. I have been
25 communicating with Ms. Fox-Young who may want to

1 chime in, along with her three-month old, if the
2 Court is willing to hear her out real quick.

3 THE COURT: No, that's fine. Ms.
4 Fox-Young, are you there?

5 MS. FOX-YOUNG: Yeah, I'm here, Your Honor.
6 I just would like to add -- I guess we need to see
7 what the Government does produce. And we briefed
8 this in our response and our request for a Daubert
9 hearing. But I think under Healy, the Court needs
10 look real closely at what facts outside the
11 investigation of this case these experts rely on.

12 The Court was pretty specific under
13 Rodriguez. And I know the Court has looked at that.
14 But the Court needs to ensure that facts outside of
15 the case at hand, fact witnesses' expertise. And I'm
16 just not sure that that's clear here. I think
17 especially because we're looking at experiential
18 witnesses. The Tenth Circuit has been clear, and
19 this Court has been clear that the gatekeeping role
20 needs to be relatively probing before the Court gives
21 the imprimatur of an expert monitor to these
22 witnesses. And so I think we're going to want to
23 have a hearing. But we'd like to see -- of course,
24 we'd like the Court to grant the hearing, but we'd
25 like to see what the opinions are first.

1 THE COURT: Well, I guess I'm not excited
2 about having a qualification hearing. I mean, we can
3 do that at trial, if y'all want to challenge the
4 qualifications at trial. I'm not seeing Daubert
5 issues here, so I'm not seeing a Daubert issue here.

6 It seems to me that they are going to be
7 experienced outside of the investigation of the SNM
8 case. I mean, I've excluded them talking about the
9 SNM case. So the fact that they're testifying
10 generally, I think that their reasons and basis could
11 state that it is -- and maybe I could require this --
12 that they state their experience beyond this case --
13 what is the reason they're testifying this, beyond
14 their investigation in this case. So I guess that's
15 kind of what I'm thinking on that; that you're going
16 to get what you're entitled to in one shape or
17 another. And some of the things that maybe you're
18 raising, we can -- I can order that the summaries
19 state the reasons and basis beyond the investigation
20 of this case.

21 All right. Do you have anything else, Mr.
22 Villa?

23 MR. VILLA: No, Your Honor.

24 THE COURT: All right. Mr. Castle?

25 MR. CASTLE: Yes, Your Honor. The one

1 problem I see is that experience can be drawn upon
2 from a number of sources. It's a saying that
3 experience doesn't really get us to the question of
4 whether this is a confrontation clause problem again.

5 So I believe the Government in their
6 explanation of what the bases and reasons for this
7 expert opinion are, they need to tell us what the
8 source of that is. Because, once again, if it's
9 interviews with other inmates, SNM inmates, or if
10 it's reading another report from somebody else that
11 works for STIU, that's a confrontation problem.

12 And so it would help the Court in doing the
13 analysis, beyond just whether the witness is
14 qualified, but it's really going to whether there is
15 a confrontation issue that's present, or hearsay
16 issue present. So I would just ask --

17 THE COURT: Well, here's the thing I
18 always -- you know, if they talk to 2000 gang
19 members, I mean, that's probably not a confrontation
20 problem, right? It's not hearsay. They're forming
21 an opinion based upon 2000 interviews. If they talk
22 to one, and they come in and tell them, it's probably
23 a confrontation. But at some point, somebody that's
24 talked to 2000 people is probably an expert, and
25 somebody that's talking to one is a conduit. I would

1 think that once we have elevated these people to
2 talking about things on this investigation they're no
3 different than your experts, for example.

4 MR. CASTLE: Well, I didn't endorse a
5 corrections expert. But with that said, the courts
6 haven't really addressed this. And that was one of
7 the things I brought up in our supplement -- I can't
8 remember the number -- that was filed just last
9 week -- and that is: Can an opinion be composed or
10 derived from a series of testimonial statements, and
11 then somehow become insulated from the confrontation
12 clause? And I don't believe the whole is any
13 different than the sum of its parts.

14 So if it's made of 2000 testimonial
15 statements, that opinion itself is a violation of the
16 confrontation clause. And the reason being is,
17 you're doing indirectly what you can't do directly.
18 What you're doing is making it so that defense cannot
19 cross-examine the source of the information that the
20 expert is forming its opinion on.

21 Now, I understand that no courts have
22 really addressed this yet, and so it's a novel
23 concept. But I believe that a pure understanding of
24 the confrontation clause would apply to it.

25 Very quickly, I went back and analyzed this

1 thing from an original intent aspect. And at the
2 time the Framers framed the Constitution Sixth
3 Amendment, they had expert witnesses that were
4 testifying at that point. But experts were required
5 to testify in the form of hypothetical questions.
6 And so they weren't allowed to make opinions that
7 were the kinds that the Government is issuing. When
8 the Sixth Amendment was enacted, it did not delineate
9 between what kind of witness it was. It says
10 "witnesses." So that would apply to experts and
11 nonexpert witnesses.

12 And so I believe that -- well, our position
13 is -- doesn't matter what I believe -- what our
14 position is, is that the Sixth Amendment is violated
15 when the prosecution puts up an expert whose opinion
16 is derived from out-of-court testimonial statements
17 by others.

18 THE COURT: All right. Well, take a look
19 at the Fourth Circuit's opinion in United States v.
20 Johnson, which was the one that the Tenth Circuit
21 relied on, I think, pretty heavily in Pablo, which is
22 this March opinion that Judge Tymkovich -- it's an
23 unpublished opinion -- but it came out this year.
24 And I think it may address some of the things that
25 you're talking about. It doesn't maybe put it in the

1 language that you're using. But when it says: The
2 question is whether the expert is, in essence, giving
3 an independent judgment, or merely acting as a
4 transmitter for testimonial hearsay, I think once we
5 started getting more general information, the less
6 likely it is that it's a conduit for testimonial
7 information. I'll probably draw the line somewhere
8 around that Fourth Circuit case which Judge Tymkovich
9 relied upon -- Chief Judge Tymkovich relied upon in
10 Pablo.

11 All right. Anything else on this? It
12 looks like we're going to wait till after lunch to
13 make a final decision. Anything else anybody wants
14 to say? Mr. Villa?

15 MR. VILLA: I think you alluded to it in
16 speaking to Ms. Fox-Young. But the Government's new
17 notices will include the basis of these experts'
18 opinions outside of investigation of this case.

19 THE COURT: It should say -- the basis of
20 the opinion should specify what it's done outside of
21 scope of the investigation in this case.

22 MR. VILLA: And I notice that the Court is
23 mentioning the defense experts. And I know the law
24 is not going to change just because they're defense
25 experts. But the Government hasn't filed objections

1 or anything else. And the Court's not expecting us
2 to do anything different.

3 THE COURT: We'll get to your experts in a
4 moment. I mean, I have read all the notices that the
5 defendants have filed.

6 I did notice the Government hadn't done
7 anything with those. Let's see what they want to do
8 on that score. But let's focus on the Government's
9 experts at this point, because I think whether y'all
10 end up calling expert witnesses at all may be greatly
11 reduced if the Court's proposed line drawing is
12 adopted.

13 All right.

14 I guess Pablo was written by Judge Ebel in
15 2012. That's published. It's Sandoval that's the
16 Judge Tymkovich opinion that came out in 2017.

17 All right. Let me set that material aside
18 and we'll pick that up after lunch.

19 But to answer your question, Mr. Villa, no,
20 I don't think you need to do anything more. I think
21 it's -- probably the Government's got to do the next
22 move to see whether they -- what they want to do with
23 your expert or experts.

24 The next motion I have up, Ms. Sirignano,
25 Mr. Adams, is Mr. Garcia's motion for a Daubert

1 hearing, and to exclude Government expert witness
2 testimony. And I think this is joined by Defendant
3 Patterson and quite a few other defendants.

4 Is there anything that's still alive that I
5 haven't ruled on or taken care of with this motion
6 and our prior motions? Mr. Adams? Ms. Sirignano?

7 MS. SIRIGNANO: Your Honor, we were
8 requesting the Daubert hearing of the experts, in
9 addition to the Rule 16 violations that we believed
10 in the previous response to the Government's expert
11 notice. And so I was hoping to be able to have the
12 Daubert hearing this week sometime, so the Court
13 could perform its gatekeeping role in determining the
14 reliability and the basis and the relevancy of each
15 Government expert witness. So that's why this motion
16 was filed.

17 THE COURT: Well, that was the reason I was
18 trying to start the hearing with the bit of an
19 exhortation. Do the defendants really want a Daubert
20 hearing of Dr. Zumwalt? I mean, is that really where
21 we're going? I mean, some of these people -- I mean,
22 is that really what you're thinking, Ms. Sirignano,
23 we need to have Daubert hearings of Dr. Zumwalt and
24 some of these people?

25 MS. SIRIGNANO: Judge, Dr. Zumwalt is not

1 part of my client's alleged counts in the indictment.
2 Your question is better directed to those who joined
3 that, as well as to their counsel. But I definitely
4 would like a Daubert hearing for sure on the two
5 experts that are specifically relevant to our case,
6 FBI forensic examiner Tiffany L. Smith, as well as
7 the FBI forensic examiner Theodore Chavez.

8 THE COURT: So you're wanting a Daubert
9 hearing of Smith and Chavez.

10 Let me ask the defendants? Who else are
11 you going to want, if anybody, Daubert hearings of?
12 Is there anybody else besides Smith and Chavez?

13 MR. VILLA: Again, Your Honor, I think it
14 depends on the new notices we get with respect to the
15 gang experts. But I don't want to foreclose that.

16 THE COURT: Okay. I guess it seems to me
17 the defendants are in a little bit of a difficult
18 position demanding a Daubert hearing on the gang
19 experts, given that y'all got gang experts as well.
20 There seems to be some agreement there is expertise
21 in this area. I don't know how you're going to
22 evaluate whether a certain gang expert's opinion is
23 peer reviewed or subject to error rates. I mean, I
24 don't know what the standard, really, on gang experts
25 is going to be as far as a Daubert hearing. It seems

1 to me it's going to be the field of
2 cross-examination, rather than any Daubert issue.

3 MR. VILLA: I certainly think it's
4 nontraditional, Your Honor. But, you know, if there
5 is a particular opinion that we have concerns about
6 the reliability, I think the purpose of the Daubert
7 would be to explore the basis for those opinions, how
8 they came to that conclusion, you know, that gangs
9 have tattoos, gangs use slang words. I don't
10 anticipate Daubert hearings on that.

11 But the issues -- depending on what comes
12 up in the notice -- that touch more on what's
13 happening at least in Counts 6 through 12 or the
14 other counts, those types of opinions we may ask the
15 Court to scrutinize prior to trial for their
16 reliability.

17 MS. SIRIGNANO: And, Judge, if I could just
18 chime in, I think what's concerning -- at least to
19 our client -- is that the bases really haven't been
20 disclosed with many of these experts. And I don't
21 know, particularly, if some of these medical
22 examiners relied on toxicology reports or other
23 scientific reports in determining their expert
24 opinion. And whether or not those tests were done
25 with reliability and meet the standards of 702, Rule

1 702, Daubert, and Kumho Tire. So that's why this
2 motion was filed, just to make sure that the
3 confrontation issue, Sixth Amendment confrontation
4 issue, is satisfied, and the Court can satisfy its
5 gatekeeping function, with making sure that this
6 evidence is reliable and credible with all the
7 Government's experts.

8 THE COURT: Well, I guess I'm a little
9 disappointed to hear now that the basis and reasons
10 have been disclosed with many of these experts, given
11 that we spent a good chunk of the morning carefully
12 going through the Rule 16 requirements, and everybody
13 being satisfied that the written reports for almost
14 all the experts satisfied that requirement. So I
15 guess now I'm disappointed to hear you saying, Ms.
16 Sirignano, that you don't know the basis and
17 opinions; they haven't been disclosed. So what are
18 you trying to say?

19 MS. SIRIGNANO: Well, Judge, I think my
20 position earlier this morning was that, at least in
21 the two experts that concern Mr. Garcia -- I've been
22 consistent -- that they haven't been disclosed.

23 THE COURT: Well, now, you just -- Ms.
24 Sirignano, you just used "many of these experts." So
25 if you're just limiting your comments to Ms. Smith

1 and Mr. Chavez, I can deal with it. But if you're
2 making a blanket statement that "many of these
3 experts" you do not know the basis and reasons for
4 their ruling, after we've spent a long time this
5 morning going through the Rule 16 and talking about
6 the written reports, I need to have you either
7 withdraw that comment or clarify it.

8 MS. SIRIGNANO: I apologize, Your Honor. I
9 overstated. I'm concerned with our two experts,
10 Judge.

11 THE COURT: All right. Well, then my
12 memory with Smith and Chavez is you do have written
13 reports from both of them. Am I correct?

14 MS. SIRIGNANO: Yes, Your Honor.

15 THE COURT: And we have worked out a
16 procedure for getting opinions, and the basis and
17 reasons for those opinions for the gang experts;
18 correct?

19 MS. SIRIGNANO: Yes, Your Honor.

20 THE COURT: So can I put aside that there
21 is any disclosure issues or problems? If you want a
22 Daubert issue on those people, that's a separate
23 issue. But can I put aside the basis and reasons for
24 the time being?

25 MS. SIRIGNANO: Yes.

1 THE COURT: All right. Who else? Anybody
2 else think there is going to be Daubert issues to
3 anybody else other than Smith, Chavez, and possibly
4 the gang experts after the Government discloses their
5 opinions?

6 MR. BENJAMIN: Your Honor, if I may have
7 just a second. That is my position, but it's
8 regarding Dr. Zumwalt.

9 THE COURT: Take your time.

10 Mr. Benjamin?

11 MR. BENJAMIN: Yes, Your Honor. And Your
12 Honor, I would refer the Court to something that my
13 investigator, Bill Elliott, had provided to me this
14 morning, that I'm still in the process of reviewing,
15 but the reason we joined the motion regarding
16 Dr. Zumwalt was some, essentially, information that
17 I've been -- Bill Elliott, my investigator, has
18 communicated to me over past investigations. But
19 there was an article this morning, on Monday,
20 November 27 --

21 THE COURT: Well, I was only using Zumwalt
22 as an example. Is that really -- I wasn't suggesting
23 that you were -- or even Ms. Sirignano -- were
24 challenging Mr. Zumwalt. You may, but I was just
25 using him as an example. Is that really -- were you

1 really challenging Dr. Zumwalt on a Daubert basis?

2 MR. BENJAMIN: Your Honor, I am -- I
3 believe Mr. Gallegos will be, at least at this point
4 in time, Mr. Gallegos will. And I apologize, I
5 misunderstood the Court's question.

6 THE COURT: So we add Dr. Zumwalt to -- as
7 a person there is going to be a Daubert challenge to.

8 All right. Anyone else besides Smith,
9 Chavez, Dr. Zumwalt, and possibility the Government's
10 gang experts?

11 All right. Mr. Beck, are you handling the
12 Daubert issues here on the experts?

13 MR. BECK: That's right, Your Honor.

14 THE COURT: All right. What about Smith?
15 Are you going to -- how are you going to deal with
16 the Daubert challenge, or propose to deal with it?

17 MR. BECK: Well, Your Honor, I don't
18 understand what the basis of the Daubert challenge
19 is. I mean, I guess if we're going to have to get
20 into whether the conclusions were reliable -- and I
21 mean, if the Court is going to order a Daubert
22 hearing, then we're going to have to present
23 Ms. Smith for a Daubert hearing.

24 THE COURT: All right. Same for Chavez,
25 Dr. Zumwalt, and if in fact, there are Daubert issues

1 with the gang experts?

2 MR. BECK: Right.

3 THE COURT: Same response?

4 MR. BECK: Yes, Your Honor.

5 THE COURT: Let me ask Ms. Wild -- are you
6 still on the phone?

7 THE CLERK: Yes, sir.

8 THE COURT: Were you, in setting up these
9 hearings this week, anticipating that we would do
10 Daubert hearings while we were here?

11 THE CLERK: Yes.

12 THE COURT: Okay. Where is Ms. Smith?

13 MR. BECK: I think they're in --

14 MS. SIRIGNANO: Your Honor, I believe she's
15 in Quantico.

16 MR. BECK: Right, in Virginia.

17 THE COURT: And where is Chavez?

18 MR. BECK: Quantico, Virginia.

19 THE COURT: And Dr. Zumwalt is in
20 Albuquerque?

21 MR. BECK: That, I don't know.

22 MS. SIRIGNANO: Not any longer, Your Honor.

23 THE COURT: Where is he now?

24 MS. SIRIGNANO: I just know he's left OMI,
25 but I'm not sure where he's living or working.

1 THE COURT: Your gang experts are all in
2 Santa Fe?

3 MR. BECK: No. Ron Martin is here; he just
4 stepped into the courtroom during the last break,
5 Chris Cupit is in Albuquerque on his way down here, I
6 believe. And Sergeant Sapien, I believe, is in Santa
7 Fe.

8 THE COURT: Well, on the gang experts --
9 well, think about how we can use this time
10 profitably. If we need to start moving some of those
11 experts here to do the Daubert, think about which
12 ones you want to try to get here, and whether we've
13 got the time to do it.

14 I'll keep plowing through motions. And
15 we'll be taking a lunch break here in about 45
16 minutes. But let's think about trying to turn part
17 of this week into Daubert hearings, and which
18 witnesses you want to get here and start dealing
19 with.

20 MR. BECK: Understood.

21 THE COURT: All right. So I think we've
22 fleshed out the Daubert issues.

23 Is there anything else, Ms. Sirignano, Mr.
24 Adams, you want to say on the Daubert issues, other
25 than, I guess, we'll have to set up the Daubert

1 hearings themselves either this week -- or if we
2 don't get them done this week -- in the future?

3 MS. SIRIGNANO: No, Your Honor. Thank you.

4 THE COURT: Anybody else? Any other
5 defendants on the Daubert issues, other than what
6 we're -- the hearings themselves?

7 All right. So let's take up Mr. Garcia's
8 motion for specification of co-conspirator statements
9 in a pretrial hearing on the statement's
10 admissibility. Given what I've already ruled and how
11 we're going to proceed on satisfying the James
12 requirements -- I understand there has been some
13 development, some discussions among the parties, so
14 we may be refining that.

15 But, Mr. Adams, it's your motion. Is there
16 anything else I need to do to address the issues in
17 your motion?

18 MR. ADAMS: No, sir. We are still on the
19 same page with Mr. Villa and his request. And if
20 there have been discussions, we've not been privy to
21 them. So we'd like the hearing.

22 THE COURT: Okay. But my rulings have
23 addressed them all? Everything in your motion I've
24 already addressed?

25 MR. ADAMS: Yes, sir. I think we were just

1 asking for the James hearing. And you said: We'll
2 have the James hearing, and it looks like we'll have
3 it in short order. That sounds like fun.

4 THE COURT: All right. Anybody else on
5 Mr. Garcia's motion?

6 Mr. Castellano, are you handling this?

7 MR. CASTELLANO: Yes, Your Honor.

8 I don't know if we finalized all the
9 discussions, but during the break there were
10 discussion with some of the teams about potentially
11 providing statements to them, and streamlining the
12 process, and going forward from there.

13 I think at least -- possibly two teams may
14 want to have a Daubert hearing, so we just need to
15 prepare our witnesses during the break, maybe
16 tomorrow have the hearing, whatever the Court's
17 pleasure is. I believe Defendant Garcia and
18 Defendant Perez may be the two who want them.

19 The other ones, we've agreed to prepare the
20 statements. It basically would be a summary, who
21 made the statement to whom, the context of the
22 statement. And then I think streamline things in
23 that fashion.

24 THE COURT: Okay.

25 MR. CASTELLANO: So I think we may have

1 bifurcation of the James hearing.

2 THE COURT: All right. So it sounds like
3 Mr. Adams, Ms. Sirignano, Mr. Villa, y'all are going
4 to get the James hearing. Everybody else has worked
5 out a proceed with the Government to satisfy --

6 MR. ADAMS: I mean, nobody asked me about
7 it. But had they asked me, I would have said that's
8 exactly what had been requested in 1303. And I
9 think, at this point, with a January 29 date, we'd
10 rather just have a witness put up cold, and get into
11 it, just so we can know what we're dealing with right
12 around the corner. So we would have loved the
13 Government's response to have been: Hey, let's do
14 this bifurcated way, so you can actually prepare for
15 the hearing. But since we're here, and it's the week
16 after Thanksgiving, and we're going to be in front of
17 a jury in two months, we'd just like to get a witness
18 up and get it going.

19 THE COURT: Well, I think that's what Mr.
20 Castellano is saying.

21 MR. ADAMS: So I guess that's my way of
22 saying I'm in agreement with brother counsel.

23 THE COURT: All right. So everybody, other
24 than really Mr. Villa and Mr. Adams, y'all have
25 worked out -- you're going to get a statement from

1 them.

2 And does that bring -- Mr. Castellano, does
3 that bring their James hearing to a conclusion, or is
4 that -- they're going to get the statement and then
5 they can request or have a James hearing without --
6 how does it work? Is it bifurcated?

7 MR. CASTELLANO: Yes, Your Honor. It's my
8 understanding they'll get the statements and they'll
9 make a determination at that point whether they want
10 to challenge the statements.

11 THE COURT: All right. So it's two-step
12 for everybody else. And it's -- we go immediately
13 into hearings with --

14 MR. ADAMS: Judge, I'm sensing there are a
15 number of people who have not made that agreement, or
16 feel like they've not made that agreement.

17 THE COURT: Well, they need to speak up.

18 MR. VILLA: Your Honor, I think I can speak
19 to that.

20 THE COURT: I don't really need to hear
21 from you or from Mr. Garcia. I need to hear from
22 other people in the room. So Mr. Lowry looks like
23 he's up.

24 MR. LOWRY: Thank you, Your Honor.

25 No, Mr. Castellano did mention that to us

1 during the break. And in the middle of that
2 conversation we discussed with the Rudy Perez team,
3 Mr. Baca would join Mr. Perez in just moving this
4 forward. We have a trial, I would point out, is in
5 less than two months at this point.

6 THE COURT: Is it the 29th, or I have the
7 date wrong?

8 MR. LOWRY: 29th, Your Honor. Two months.
9 Losing track of time.

10 THE COURT: Too far behind.

11 MR. LOWRY: I know these two months are
12 going to go by very rapidly, Your Honor, so we would
13 like to move this forward.

14 THE COURT: All right. So let me ask you,
15 Mr. Castellano, is your evidence on the James going
16 to be any different with Baca than it is Perez? Is
17 it going to be the same hearing?

18 MR. CASTELLANO: Mr. Baca is involved in
19 multiple conspiracies, so his would include
20 additional statements.

21 THE COURT: Additional statements, okay.

22 What's your thoughts on what Mr. Lowry just
23 said?

24 MR. CASTELLANO: Sounds like he wants to
25 have a hearing.

1 THE COURT: Right.

2 MR. CASTELLANO: So we just need to have
3 time to prepare the witnesses. What I'd ask is
4 sufficient time, so that we can have a smooth --

5 THE COURT: But you're ready to go on
6 Perez? You're ready to go on Garcia? And if we've
7 got more time, then we'll start with Baca?

8 MR. CASTELLANO: Yes. We'll do what we
9 need to do. I just ask time to prepare it so that
10 way we can avoid a lot of refreshing recollection and
11 a disjointed hearing. So I'm asking time to prepare
12 the witnesses to make sure we know which statements
13 we're covering for the hearing.

14 THE COURT: Okay. All right. Other than
15 Perez, Baca, Garcia --

16 MS. JACKS: We don't have any agreement --

17 THE COURT: You don't have any agreement?

18 MS. JACKS: -- with the Government. So
19 we're ready to proceed as well on behalf of Mr.
20 Sanchez.

21 MR. CASTELLANO: We'll cover the entire
22 Molina case with the James hearing.

23 THE COURT: All right. Is that then --
24 we're going to get an immediate James hearing on the
25 Molina murder, and then everybody else is going to

1 get bifurcated, get to see the statements first, then
2 you get to decide whether you want a James hearing?
3 Everybody in agreement on that?

4 All right. Anything else, Mr. Garcia, Ms.
5 Sirignano, on your motion, that I need to deal with?

6 MR. ADAMS: No, sir. Thank you.

7 MS. SIRIGNANO: No, Your Honor. Thank you.

8 THE COURT: All right. The next motion is
9 one that I think we've covered. It's Daniel Sanchez'
10 motion on the Rule 16 issue, the gang expert issue,
11 how we're going to proceed. Is there anything else
12 on that issue, that motion, Ms. Jacks, Mr. Jewkes?

13 MS. JACKS: No.

14 THE COURT: We've covered it all?

15 MS. JACKS: Yes.

16 THE COURT: All right. And then the next
17 motion, I think, is yours, Mr. Benjamin, for a James
18 hearing. And you're -- if I understand where you
19 are, are you in the bifurcation, or immediate
20 hearing?

21 MR. SINDEL: Your Honor, if I may address
22 that. We are in the bifurcation.

23 THE COURT: You're in the bifurcation.

24 So is there anything else, then, with your
25 motion that I need to address at this time?

1 MR. SINDEL: Not that I could think of at
2 this time.

3 THE COURT: Okay. How about you, Mr.
4 Benjamin. Anything you can think of?

5 MR. BENJAMIN: No, Your Honor.

6 THE COURT: All right. So the bifurcation
7 will take care of that.

8 While we're waiting probably for the
9 Government to tell us what they're going to do on
10 experts, and then on the James hearing, let me see if
11 I can pick up a couple of issues. If I can't, I
12 can't. But let me see if I can pick up a couple of
13 issues.

14 Let me take up these peremptory challenges.
15 Let me give you some musings out loud here, and then
16 formulate it into a probable ruling here. With this
17 many defendants, it seems to me it's going to be very
18 difficult to give three additional peremptory
19 challenges. That's going to be 45, if we have all 15
20 heading toward -- we just talked about -- I mean,
21 just think about that, we're going to have 60 people
22 probably in the courtroom as we select the jury.
23 I'll probably end up summoning -- I haven't talked to
24 Ms. Wild -- maybe we have, and I have forgotten the
25 specifics -- and if she remembers, maybe she go ahead

1 and fill us in -- but I guess what I'm envisioning in
2 my mind, we'll probably have 60 people in the
3 courtroom, in this courtroom, and we will probably
4 attempt to pick the jury from that.

5 If I give every defendant three, that's
6 going to be in the first trial, that's going to be
7 18, that's going to be very difficult to try to do.
8 I don't think we'll get a jury picked. If I, in the
9 second trial, with nine, that's -- you can just start
10 multiplying the numbers. It gets very difficult to
11 try to pick a jury.

12 So I'm probably not going to allow three
13 peremptory challenges. I would like to wait a little
14 bit to see if everybody that's in the room is going
15 to trial. If everybody in the room is going to
16 trial, then I'm going to probably have to be very
17 restrictive and not allow additional peremptory
18 challenges.

19 If I end up with one person, there is no
20 need for additional peremptory challenges, if there
21 is two -- you know, I've got a little leeway to give
22 each person a little bit of independent judgment
23 rather than collective judgment, I'd probably be a
24 little receptive to that.

25 On the other hand, if we're dealing with

1 these numbers here, I'm just not going to get a jury
2 picked if I start giving individual peremptory
3 challenges.

4 So I guess what I'm inclined to do is deny
5 the motion without prejudice. Let's see what things
6 happen over the next 62 days. And then I can make a
7 little bit more informed decision. The defendants
8 can sort of reraise it a little closer to the trial.
9 But right at the moment I just don't think I can, at
10 this point, tell the defendants that they're going to
11 get additional peremptory challenges. I think we're
12 going to have to work within the parameters of the
13 rules, and me not exercise my discretion to give it.

14 If the picture looks different than it does
15 right this minute in this room, maybe I can be a
16 little bit more liberal, and then it's possible that
17 we get down to a number that doesn't require any
18 additional peremptory.

19 So I guess that's what I'd like to do is
20 deny it without prejudice, and the defendants reraise
21 it as we get closer to trial, and test my temperature
22 there.

23 Mr. Villa, it looked like you were going to
24 get up and talk first.

25 It's Mr. Cooper's motion, so I better ask

1 him if he has anything. Mr. Castle, do you want
2 to --

3 MR. VILLA: I was just getting the mic for
4 Mr. Castle.

5 MR. CASTLE: The case law is clear that
6 it's the discretion of the Court. And I think the
7 Court is within its discretion to delay ruling or to
8 deny this without prejudice at this point.

9 I mean, frankly, we'll take whatever we can
10 get. And our arguments might be better focused when
11 we get farther down. And I think the Court is wise
12 to hold off on this at this point.

13 THE COURT: All right. Thank you, Mr.
14 Castle.

15 Did you have anything you wanted to say,
16 Mr. Villa, on this?

17 MR. VILLA: No, Your Honor.

18 (A discussion was held off the record.)

19 THE COURT: I think Ms. Wild has reminded
20 me -- if this is agreeable to everybody -- we'll
21 bring 60 in, and if we don't get them picked, we'll
22 bring them in waves of 20. So we'll keep people down
23 in the jury room, and then we'll bring in waves of 20
24 until we get our jury picked.

25 Anybody else on peremptory challenges?

1 How about from the Government? Who was
2 going to speak on that issue?

3 MS. ARMIJO: Your Honor, I can speak on
4 behalf of the United States. We're in agreement with
5 the Court's preliminary ruling: Deny it without
6 prejudice, and just see how we end up.

7 THE COURT: All right. Anybody else have
8 anything on peremptory challenges?

9 So I'll deny it without prejudice. Let's
10 see where we are as we get closer to trial.

11 All right. Mr. Villa, I want to take up
12 the issue that you had raised a little bit earlier.
13 And that is the expert report or expert notices --
14 notices of experts that the defendants have filed. I
15 think that's what all these are.

16 Let me ask the Government: After you have
17 reviewed -- I think there is nine that the defendants
18 have filed. Mr. Beck, are you going to take these,
19 this part of expert testimony?

20 MR. BECK: Yes, Your Honor. I think, given
21 the Court's ruling, if we're going to be required to
22 talk about a given Rule 16 notice disclosure about
23 the bases of the opinions -- more than I think Rule
24 16 requires -- I think what's good for the goose is
25 good for the gander -- there should be a reciprocal

1 requirement for the defendants on that. If we see
2 anything at that time, we might object to it.

3 THE COURT: Well, I mean, in a case like
4 this, the goose for the gander argument doesn't
5 strike me as very helpful. I didn't think I was
6 requiring anything beyond Rule 16.

7 I guess my question to you is: Do you have
8 specific Rule 16 challenges or Daubert challenges to
9 their experts? I mean, for example, some of this
10 stuff is pretty voluminous. I mean, most of it is
11 resumes, and stuff like that. But --

12 MR. BECK: Right. And I mean -- no, with
13 the bases of Rule 16, no, with the additional
14 requirements. That's what I was asking for was the
15 reciprocal from the defendants on the bases for their
16 opinions. I mean, I get their base on their
17 experience and their knowledge. And I think that's
18 what Rule 16 requires. But to the extent that the
19 United States is now going to have to talk about
20 additional bases for our experts, I think that should
21 be reciprocal. I understand if the Court is not
22 going to order, that that's the Court's discretion.

23 THE COURT: Well, let's take them one at a
24 time, as we did your experts. Let's go with
25 Dr. Graham. This is I think, Mr. Benjamin, your

1 expert. Have you produced any expert report here? I
2 know you've given them a CV, but have you produced
3 any expert report?

4 MR. BENJAMIN: You said Dr. Graham, Your
5 Honor?

6 THE COURT: Yeah, I'm looking -- medical
7 examiner, Michael Graham, M.D.

8 MR. BENJAMIN: Mr. Sindel is going to
9 handle that, Your Honor.

10 MR. SINDEL: Your Honor, we have not. We
11 have produced the CV. We have not produced any
12 reports. We will be able to do that.

13 THE COURT: All right.

14 MR. SINDEL: Although I'm really doubting
15 that we will be calling him as a witness at this
16 point in time.

17 THE COURT: All right. What do you
18 propose, Mr. Beck, as a deadline to produce the Rule
19 16 report for these experts?

20 MR. BECK: I think two weeks is fine.

21 THE COURT: Let me ask -- I'm going to go
22 through these experts. If I determine that the
23 disclosures have not complied with Rule 16, could all
24 the defendants live with a deadline of two weeks from
25 today to produce either a report or a summary that

1 complies with Rule 16 requirements? Mr. Benjamin?

2 MR. BENJAMIN: Your Honor, for Ms. Susana
3 Ryan, she has given me a list that she says -- she's
4 the DNA expert that I've designated -- she has a list
5 that she has provided me that I was going to give to
6 the Government today of materials she requires,
7 essentially materials that we talked about last time,
8 in order do that. And these are materials that have
9 been provided, as I said, in a prior trial in this
10 district.

11 THE COURT: Well, you may need to
12 supplement her report. But can you still live with
13 14 days from today that everybody produce either
14 opinions or either a report or a summary that
15 complies with Rule 16? You may have to supplement it
16 after you get some material. But can everybody live
17 with that?

18 MR. BENJAMIN: I think, as long as the --

19 MS. SIRIGNANO: Your Honor, this is Amy
20 Sirignano. I'm definitely going to need to
21 supplement. But we can make an initial disclosure,
22 yes.

23 THE COURT: Okay.

24 MR. BENJAMIN: Yes, Your Honor. Same thing
25 as Ms. Sirignano said for Ms. Ryan.

1 THE COURT: All right. Mr. Lowry?

2 MR. LOWRY: Your Honor, we noticed up two
3 experts for Mr. Baca. One was a computer forensic
4 expert. Another was a handwriting expert. The
5 handwriting expert was noticed out of abundance of
6 caution for rebuttal. We'd like to consult with our
7 colleagues from the United States to see whether that
8 would be necessary.

9 As for the computer forensic expert, the
10 last hearing we addressed the cellphones and the
11 ELSUR devices. We haven't had access to them yet.
12 So, Your Honor, if we could have the two weeks run
13 after we get access to the cellphones. We'll set
14 that up as soon as possible. But it still leaves
15 open the question of the ELSUR devices that I'm
16 working with other colleagues on our side of the case
17 to designate an expert if the Court allows access to
18 those devices. But, of course, all of that is yet to
19 be determined by the Court. So what I'm asking for
20 is the two weeks to run after the relevant experts
21 have had time to get access to the material they
22 would need to generate a report.

23 THE COURT: Well, what's your thoughts
24 about that, Mr. Beck?

25 MR. BECK: Your Honor, I think if there is

1 opinions they know the expert is going to testify to,
2 then they can provide those in two weeks. If it's
3 something that -- I mean, obviously it's not going to
4 have any opinions on the ELSUR devices. The expert
5 hasn't seen them. So that wouldn't make any sense.
6 So I think an initial disclosure in two weeks, if an
7 initial disclosure is necessary, that's fine. And
8 then, if it needs to be supplemented after more
9 discovery is submitted, or in this case the ELSUR
10 devices are reviewed. I think that's appropriate.

11 THE COURT: Yeah, I guess I'm still
12 inclined to stick with that. Everybody has got to
13 comply with Rule 16 within 14 days. If we have to
14 supplement, we have to supplement. But not delay the
15 initial report. I think you've got to start getting
16 some stuff out there. I mean, some of you -- I'm not
17 being critical here, but you know, we set up a
18 procedure three weeks ago, and some of you haven't
19 sent your letters to the Government. So,
20 realistically, you can't be complaining too much if
21 you're not -- we set up a procedure and you don't
22 send in the letters to the Government. That doesn't
23 trigger anything. I'm not going to be real
24 sympathetic to everybody saying, Well, the Government
25 hasn't produced stuff when we set up a procedure, and

1 nobody has taken advantage of it, or some people
2 haven't taken advantage of it.

3 So I think the disclosure on Graham is
4 inadequate. So you'll need to supplement or produce
5 a report that complies with Rule 16 within two weeks
6 from today.

7 As far as Ryan is concerned, I think the
8 same ruling on that.

9 Let's go, then, to Dr. Raven. I think all
10 her testimony -- well, same thing, Mr. Villa, I think
11 you're going to have to given the Government more on
12 that. So report in two weeks.

13 MR. VILLA: Your Honor, I think Dr. Raven
14 was noticed purely as a rebuttal witness. And based
15 on the Court's rulings this morning that the
16 Government's experts on the pathology -- I think
17 earlier I said Dr. Zumwalt. I misspoke. It's Dr.
18 Kastenbaum. If there aren't any additional
19 supplementation made by the Government beyond what's
20 in the autopsy report, we wouldn't intend to call
21 Dr. Raven.

22 THE COURT: Okay.

23 MR. VILLA: I think we were just trying to
24 meet the deadline at that point.

25 THE COURT: All right. So unless you

1 supplement, there is no need for any additional
2 information on Dr. Raven. Would you agree with that?

3 MR. BECK: That's fine.

4 THE COURT: All right. Then, let's go to
5 Mr. Troup's notice for Karen Green. I'm going to
6 have to refresh my memory about Ms. Green.

7 MR. BURKE: Your Honor, Karen Green is a
8 DNA expert. And we actually did send an email over
9 to the prosecutors in October asking for additional
10 information. And I think in all of the busywork that
11 we've been engaged in, that email has been ignored.
12 The additional request that we made related to
13 protocols that the lab had back in 2001, as well as
14 protocols in 2014, when some DNA was retested.

15 So we would ask for two weeks from when we
16 get the material that we asked for five or six weeks
17 ago.

18 THE COURT: All right. Well, I think I've
19 got to treat everybody consistent here. So I need
20 something that complies with Rule 16 on what you
21 already have, and then you can supplement it.

22 MR. BURKE: Within two weeks.

23 THE COURT: Within two weeks.

24 MR. BURKE: All right. Thank you, Your
25 Honor.

1 THE COURT: Is that agreeable, Mr. Beck?

2 MR. BECK: Yes, Your Honor.

3 THE COURT: All right. Mr. Baca's
4 handwriting expert, Songer.

5 MR. LOWRY: Your Honor, we'll enter a
6 preliminary report within two weeks.

7 THE COURT: And same for Kesden?

8 MR. LOWRY: Yes, Your Honor.

9 THE COURT: Is that acceptable, Mr. Beck?

10 MR. BECK: Yes, Your Honor.

11 THE COURT: Mr. Garcia's chemist, Janine
12 Arvizu. I guess I don't think that's probably
13 adequate either. I mean, we had some areas of
14 testimony, but we don't have her opinions and the
15 basis or reasons for them. So I'm inclined to
16 require some report in two weeks. Ms. Sirignano?
17 Mr. Adams?

18 MS. SIRIGNANO: That's fine, Your Honor.

19 THE COURT: Okay. Same for Brian, Mr.
20 Brian?

21 MS. SIRIGNANO: Your Honor, he's a computer
22 specialist. And we haven't yet received access to
23 the digital evidence. So I can get something out,
24 and then we'll need to supplement on him.

25 THE COURT: Where are we on -- y'all had

1 some placeholders, firearms experts and DNA experts.
2 Where are you on that? Have you chosen experts yet
3 on those categories?

4 MS. SIRIGNANO: Yes, Your Honor, with the
5 DNA expert. And I'm having some difficulty with the
6 firearms expert, which we can resolve within the next
7 two weeks.

8 THE COURT: Okay. So let me have some
9 reports on those two. And you'll need to identify
10 your expert and give your expert's CV within two
11 weeks. If we don't have a name and an expert, then I
12 think we're probably going to have to start excluding
13 experts. So we need to pin that down.

14 MS. SIRIGNANO: Yes, Your Honor.

15 THE COURT: All right. Anything else, Mr.
16 Beck, on Mr. Garcia's experts?

17 MR. BECK: No, Your Honor.

18 THE COURT: All right. Did you have
19 something you wanted to say, Mr. Villa?

20 MR. VILLA: No, Your Honor.

21 THE COURT: Okay. Let me go then to Carlos
22 Herrera's expert, Shannon McReynolds. We've got the
23 CV, but no report. So I think, given this is a
24 prison gang person, I need to hold you to the same
25 requirements I am the prison gang expert of the

1 Government. So I need something that complies with
2 Rule 16. So you'll need to bullet point the
3 opinions.

4 MS. BHALLA: Your Honor, I don't have a
5 problem with that. The issue with that, I think
6 we're going to need a little bit more --

7 THE COURT: Is the microphone floating
8 around here?

9 MS. BHALLA: As we identified in our
10 disclosure, Your Honor, a lot of Mr. McReynolds'
11 testimony is going to be in the form of rebuttal
12 testimony. And until we get some more opinions from
13 the Government witnesses laid out, I don't know how
14 much more we can actually supplement our disclosure.
15 We'll do the best we can with what we have. But we
16 don't have a lot to work with at the moment.

17 THE COURT: I well, I think you do. I
18 think you do. I mean, if the Government comes back
19 in after lunch and says they can live with the line,
20 they've today identified some areas they're going to
21 talk about generally, about 10 areas they're going to
22 talk about generally with gang experts. So --

23 MS. BHALLA: As long as we have that, we
24 won't have a problem doing that, Your Honor.

25 THE COURT: Okay. And if you need to

1 supplement, you can. So I think the disclosure is
2 not adequate on that. So you'll need to be more
3 specific.

4 I think probably, Mr. Beck, the basis and
5 the reasons for his opinion are probably pretty well
6 set out. If you need anything further on that, it's
7 going to be his experience. Like your experts, he's
8 not going to be constrained by an investigation of
9 this case. So I think the basis and reasons,
10 probably the notice is sufficient. It's -- what you
11 need is the opinions?

12 MR. BECK: I think so, yeah. It's a pretty
13 easy thing to meet with these law enforcement
14 experts. So I agree that the bases is adequate.

15 THE COURT: So Ms. Bhalla, I think what I'm
16 looking for is the same thing I'm looking for from
17 the Government, just bullet points, what the opinions
18 are. We've got a CV. I think you've given the basis
19 and reasons. So it's just bullet points in the
20 opinions.

21 MS. BHALLA: Thank you, Your Honor.

22 THE COURT: All right. Mr. Lowry?

23 MR. LOWRY: Your Honor, just briefly a
24 housekeeping matter. At the last hearing we
25 discussed the ELSUR devices and the cellphones. And

1 if I understand it correctly, Ms. Armijo --

2 THE COURT: I was going to address those
3 after I get through with the experts. Does this
4 relate directly to the experts?

5 MR. LOWRY: It does, Your Honor, because I
6 think there is an open question before the parties,
7 are the multidefense team limited to one computer
8 forensic expert to review both classes of devices?
9 And if that's the case, the defense team needs to
10 select a specific expert. Because I think we've
11 noticed an expert, and I think Amy Sirignano's team
12 noticed an expert.

13 THE COURT: Let me come back to that. Let
14 me come back to the devices probably after lunch.
15 But I want to address the Ms. Jacks' letter to the
16 Government and see where we are on that.

17 Here, do I get to laugh that Rudy Perez is
18 calling John Shanks to be an expert on shanks? I
19 mean, do we all get to enjoy that?

20 MR. VILLA: Yes, Judge.

21 THE COURT: All right. Thank you.

22 What else do you need on Mr. Shanks? You
23 need bullet points on his opinion, and that's it?

24 MR. BECK: Yes.

25 THE COURT: All right. So two weeks, give

1 me that. Then you may have to supplement after you
2 get the Government's opinions. But --

3 MR. VILLA: Judge, we don't have a problem
4 supplementing. Mr. Shanks just underwent a back
5 procedure, and I don't know the current state of his
6 health. Could I have three weeks? And if there is
7 any issues, we can report back to the Court?

8 THE COURT: Let's do it the other way. Let
9 me set a deadline of two weeks. And if you need to
10 move for an extension on it, work with your
11 colleagues and Mr. Beck and move for it. But let me
12 go ahead and set it so I'm consistent with everybody.
13 And if you need to move, you can. Let's just do a
14 list of opinions. Does that work for you, Mr. Beck?

15 MR. BECK: Yes, Your Honor.

16 THE COURT: So that's all you'll get for
17 Mr. Shanks is just a list of bullet point of
18 opinions.

19 The same way on Mr. Garcia and Mr. Troup's
20 gang or corrections expert? Mr. Cooper, Mr. Castle,
21 and Ms. Harbour-Valdez, Mr. Burke, can y'all live
22 with two weeks, you'll give us bullet points on your
23 people, and you can supplement later if you --

24 MR. BURKE: Yes, Your Honor.

25 THE COURT: All right. And then does that

1 work for you as well?

2 MR. COOPER: Judge, I don't believe that we
3 endorsed an expert.

4 THE COURT: I had you down as -- okay, so
5 this is a placeholder.

6 MR. COOPER: I think we just declined to
7 endorse one particular -- or the gang expert, Mr.
8 McReynolds. We chose to decline to endorse him, and
9 I think that was the nature of that filing.

10 THE COURT: Well, I guess then what I need
11 from you is -- I guess you need to make a decision
12 within two weeks. You need to indicate if you're not
13 going to call an expert, state that. If you are,
14 then in two weeks you need to provide a CV and a list
15 of opinions.

16 MR. COOPER: We will, Your Honor. Thank
17 you.

18 THE COURT: Does that work for you as well,
19 Ms. Harbour-Valdez?

20 MR. BURKE: Yes, Your Honor.

21 THE COURT: Is that satisfactory on that,
22 Mr. Beck?

23 MR. BECK: That's fine, Your Honor.

24 THE COURT: All right. And then let's see,
25 Mario Rodriguez's expert? Anything I need to deal

1 with on that one?

2 MR. BECK: No, Your Honor. He's no longer
3 a defendant.

4 THE COURT: We'll just put that aside. All
5 right. Anything else? Do you, at the present time,
6 Mr. Beck, intend to Daubert challenge any of the
7 defendants' experts?

8 MR. BECK: No, Your Honor.

9 THE COURT: Okay. So we're looking at
10 additional Rule 16 disclosures for the defendants'
11 experts, but nothing further on that. All right.
12 Why don't, after lunch, we do two things: One is we
13 take up this issue, Ms. Jacks, your letter, and y'all
14 can then -- Mr. Lowry, that can be your point to
15 inform me on where we are, what I need to help you
16 with as far as experts on that. I'll look forward to
17 the Government telling me what they're going to do,
18 if they can live with the line I'm drawing on gang
19 experts.

20 And then the Government has two choices. I
21 think they can either go into a James hearing, or if
22 we need to do something on the gang experts, we can
23 go into that direction, but we'll probably move
24 rapidly into those two areas after lunch.

25 All right. Mr. Castle?

1 MR. CASTLE: Yes, Your Honor.

2 THE COURT: Let me have Mr. Villa first.

3 He was up first. Let me see him.

4 MR. VILLA: Judge, I just wanted -- I mean,
5 I know this is sort of sua sponte with respect to the
6 defense experts, but we did notice a couple of
7 experts in the spring under the first deadline. I
8 think it was the third or second scheduling order. I
9 don't think the notices are deficient, but I didn't
10 want to waive any ability to call those experts
11 because they hadn't been mentioned this morning.

12 THE COURT: Why don't you do this: Before
13 you go to lunch, tell Ms. Solis where they are,
14 because they weren't in my bundle of material. And
15 I'll take a look at them. Mr. Beck, you take a look
16 at them and see if you think they are deficient. If
17 you are, we can raise those after lunch. You've got
18 two of them?

19 MR. VILLA: I believe we had three,
20 although one we probably won't call anymore. But
21 I'll identify all of them.

22 And Mr. Castle informs me he has the same
23 issue that he wanted to raise. So --

24 THE COURT: All right. So if y'all just
25 tell Ms. Solis what I'm looking at. Mr. Beck, if

1 you'll take a look at them and see if you have Rule
2 16 problems with them; if not we'll move on. If
3 there are, if we'll take those up after lunch.

4 All right. Y'all have a good lunch. We'll
5 meet back here in about an hour, hour and 5 minutes,
6 the best we can. Nobody is going to start without
7 anybody. But let's shoot for an hour.

8 (The Court stood in recess.)

9 THE COURT: All right. I believe Mr.
10 Benjamin has left. Mr. Sindel, you're still here.
11 Is that where we are?

12 MR. SINDEL: That's my punishment, Your
13 Honor.

14 THE COURT: Okay. All right.

15 All right. During the break, I looked at
16 these additional notices. So let's take those up.
17 Mr. Perez, I think, has five additional ones. On
18 Laura Child -- well, let me ask you, did you have a
19 chance to look at these during the break, Mr. Beck?

20 MR. BECK: Your Honor, I did not. We were
21 working with our experts to prepare them for Daubert
22 and James hearings. So I did not get a chance to
23 look at those.

24 THE COURT: Okay. Well, it looked to me
25 like Laura Child, we probably needed to supplement

1 hers, so I would just include it in the same.

2 Raymond Carrillo, I think you probably need
3 to do more. That may be one that you're going to
4 have to supplement depending on what happens down the
5 road. So I'm just going to plow through these unless
6 you have comments, Mr. Beck.

7 On Dr. Brislan, I thought that was pretty
8 complete, so I don't think you need to do anything
9 more on Brislan. If the Government wants to come
10 back and ask for more, they can.

11 I think on Dr. Spence, I think you do need
12 to supplement that, so that's not adequate at the
13 present time. So we'll do the two weeks.

14 And let me refresh my memory on French.
15 Yeah, I think we need opinions of Dr. French. You
16 give the scope or area of testimony, but not exactly
17 what he's going to testify. So I think we're going
18 to need more on that. So if you'll supplement that
19 within 14 days.

20 And I believe, Mr. Lowry, you joined some
21 of those. I don't have in my head which ones you
22 joined, but I'll put you in the same category that
23 those that need supplementing, you'll need to
24 supplement within 14 days. Dr. Brislan, if you
25 joined Dr. Brislan, I don't think we need to

1 supplement that. I think that's pretty adequate,
2 unless the Government comes back and thinks
3 otherwise.

4 Let's see. Mr. Castle for Mr. Garcia, I
5 think you had Dr. Danielson. I think there was
6 sufficient disclosure on his qualifications, if I
7 recall. But given that you've gotten -- you now have
8 the reports of the Government's witnesses. I think
9 you'll need to supplement your report. It may be
10 that after there is more disclosure on the DNA, you
11 will need to supplement. But I think we need more at
12 the present time. So I'll require that.

13 And then finally -- oh, that was the notice
14 of joinder. Let's see, Mr. Lowry, Ms. Duncan, you
15 joined Child, Carrillo, and Spence. So you didn't do
16 Brislan. So my rulings will apply to that.

17 Mr. Villa, I think you joined Mr. Garcia's
18 notice, Ms. Troup's notice, Mr. Sanchez. So if you
19 have anything further on those, you'll need to do
20 those within two weeks. Unless my memory is off, I
21 think I required supplemental disclosures in all
22 three of those.

23 All right. Anything else on Rule 16
24 obligations? At the present time no Daubert motions
25 from the defendants, so that should cover the

1 defendants' experts.

2 Ms. Jacks, you may not be the right one to
3 jump on here, but I'll start with you. Where are we
4 on -- and then I'll maybe go over to Mr. Lowry --
5 where are we on the dispute about the recording
6 devices? Are you just waiting for a response from
7 the Government? Is that kind of the status of that?

8 MS. JACKS: We are, Your Honor. We filed
9 our letter, which is Document 1459, on November 20.
10 And so we haven't heard from the Government. I think
11 what we realized is that in conducting our analysis,
12 we maybe made some assumptions about who had phones
13 and who had recording devices. And I think what
14 we've realized is that we really need to flesh out
15 which cooperators had what devices, and go from
16 there.

17 You have seen the letter, right?

18 THE COURT: I have. And so let me make
19 sure I understand. The letter is, after you sat down
20 and looked at it, you thought you needed more
21 information, you were making assumptions. So the
22 letter reflects your need you're rethinking the
23 assumptions that you had, and now your current
24 information needs?

25 MS. JACKS: Correct. We also consulted

1 some experts both in academia and in law enforcement
2 regarding how -- regarding what is an FBI ELSUR
3 device, as opposed to some other recording device,
4 and how are those devices maintained and handled, and
5 how is the integrity of the information preserved on
6 those devices versus a cellphone, or some sort of
7 some other recording device. So we tried to divide
8 up our questions very specifically to the Government,
9 so that we could identify which recordings were made
10 on some sort of FBI dedicated and monitored recording
11 device versus some other -- by some other method.

12 THE COURT: All right. So you're just in
13 the waiting stage. All right. Do you need anything
14 from me at the present time?

15 MS. JACKS: Well, it would be nice -- I
16 think we can't really move forward on this issue
17 until we have answers from the Government. And then
18 we can determine whether we want to look at the
19 devices, who can look at the devices, what they need
20 to be looking for, and try to make an argument to the
21 Court about why we need that. But until we have
22 these answers, we can move slower.

23 THE COURT: Thank you, Ms. Jacks.

24 All right. Mr. Lowry, you were going to, I
25 think, begin to educate me on how this is tied to

1 some expert issue. So let me let you -- now that
2 you've got my full attention on that issue, why don't
3 you --

4 MR. LOWRY: Thank you, Your Honor. I did
5 consult and conferred with Ms. Jacks both in the
6 development of the letter that was sent to the
7 Government, because after the last set of hearings,
8 it was --

9 THE COURT: So your input is into
10 Ms. Jacks' letter.

11 MR. LOWRY: Yes, Your Honor. We would join
12 that letter.

13 But it was our understanding after the last
14 set of hearings that you had appointed Ms. Jacks to
15 be the point person for the defense teams, if you
16 will. That's my interpretation of it given the
17 Court's directive. And it seemed at the time that --
18 because there were numerous requests in motions to
19 compel addressed to the ELSUR devices, and if I
20 recall correctly the Court said, Well, I'm going to
21 appoint -- let's have one person work with the
22 Government to development access. If memory serves
23 correctly, you were emphatic that maybe, you know, if
24 the Court was inclined to give access to those
25 devices, it would be a single defense counsel or a

1 defense expert. And as Ms. Jacks has since stated,
2 we've identified a couple of experts. One is our
3 Mr. Kesden. And Ms. Sirignano identified -- we have
4 the academician, and they have a retired FBI agent.
5 And if the Court's inclined to grant access to the
6 devices, if both of them could work collaboratively
7 on this, it would get it done quicker, because time
8 is of the essence as we roll into trial.

9 Now, it's my understanding from the United
10 States -- and I didn't understand the Court's ruling
11 on the ELSUR devices to actually cover the cellphones
12 as well. But from my communications with my
13 colleagues on the other side of the case today, it
14 appears to be that the United States believed that
15 the Court's directive applied to both genres of
16 devices, both the cellphones and the ELSUR devices.
17 I didn't understand the Court's ruling to be that
18 way. We'd like to have some guidance from the Court,
19 just so we'd like to move forth expeditiously in
20 this. And if we could get, you know, both experts to
21 look at the cellphones, at least initially, that
22 could be accomplished much quicker and much more
23 efficiently, and pool the knowledge, both the
24 practical hands-on knowledge from the retired FBI
25 agent, and the point of view of a professor from

1 Carnegie Mellon University to do this more
2 expeditiously, Your Honor.

3 So that was the concern. We'd like, I
4 guess, the Court's directive on how to handle that,
5 because there seems to be --

6 THE COURT: Well, this what I would think,
7 that if you're going to have experts, it seems to me
8 that you probably ought to go ahead and do a
9 disclosure now on those experts.

10 MR. LOWRY: We disclosed them.

11 THE COURT: What are their names?

12 MR. LOWRY: Well, Greg Kesden was in the
13 disclosure we made. And I don't think Ms. Sirignano
14 is here, but I'm sure Mr. Adams has the disclosure
15 that the Chris Garcia team did.

16 THE COURT: So the two experts --

17 MS. SIRIGNANO: Judge, I'm here. It was
18 Tim Brian in our expert notice.

19 THE COURT: Say that again, Ms. Sirignano.

20 MS. SIRIGNANO: Tim Brian is our computer
21 forensic expert. He was disclosed as a retired FBI
22 agent, works with him.

23 THE COURT: So the two experts you're
24 talking about, they've been disclosed?

25 MR. LOWRY: Yes, Your Honor.

1 THE COURT: And so the question is you're
2 going to need more information before you can state
3 what they're going to testify about?

4 MR. LOWRY: And I know that we've done this
5 in other cases. And this is -- my understanding,
6 this is fairly routine within the Department of
7 Justice at this point. If they have mirror images of
8 the cellphones, they could ship those to other FBI
9 offices within the country. In a different case
10 right now I'm working with the local AUSAs that
11 shipped computer images, images of other digital
12 devices to the FBI office in Pittsburgh to work with
13 Mr. Kesden. And that's worked out, frankly, very
14 smoothly and efficiently. I haven't had an
15 opportunity to speak with my colleagues on the other
16 side of the case. But something like that could
17 hasten the process, if you will.

18 THE COURT: All right. Thank you, Mr.
19 Lowry. Before I hear from you, Mr. Beck, anybody
20 else on this cellphone or this recording device issue
21 on the defendants' side?

22 All right. Mr. Beck?

23 MR. BECK: I think we have the same
24 understanding as Mr. Lowry about the Court's order.
25 The cellphones we're making available to defense

1 counsel on request.

2 The ELSUR devices are the devices that the
3 Court ordered us to disclose via letter to the
4 defense, whether they're available. I've worked with
5 one defendants' attorney and one expert to allow them
6 to inspect the devices, as long as that's okay with
7 the FBI.

8 THE COURT: Have you gotten any more
9 information, after you looked at this a little bit,
10 as to the FBI's position on this? Are they that
11 nervous about an order saying one attorney and one
12 expert on the defense side look at this stuff, before
13 we go any further with a confidentiality order, that
14 they not disclose it to any of the defendants, any
15 other counsel, or anybody else, until that person
16 thinks there is something there that's worth looking
17 at?

18 MR. BECK: Yeah, I don't think we've had a
19 lot more clear guidance. I believe that the FBI
20 general counsel wants to be involved if we are going
21 to turn any more information --

22 THE COURT: How do I move this forward? If
23 I were to -- do you need a court order? I mean, if I
24 ordered it, and then with the understanding the
25 Government could come back and ask me to reconsider

1 before anything is done, would that move things
2 forward so we can get a final answer from the FBI?

3 MR. BECK: I mean, I think we can get
4 together and let FBI counsel know what's going on. I
5 hasten to say no, because I think that would move it
6 forward. And it sounds like the Court is willing to
7 reconsider once we get FBI involved.

8 THE COURT: Why don't we do this: Why
9 don't I order it. Because I've thought about it, and
10 it just seems to me that we need to move this issue
11 forward a little bit. So I'll order it produced.
12 If -- we're going to be here a few days and be back
13 soon, if the Government wants -- the FBI is that
14 uncomfortable with it, they can explain it.

15 I mean, I guess my rationale is these
16 devices were given to people, you know, who then used
17 them in the prison context. Some of them's resumes
18 are probably not equivalent of Ms. Jacks' and the
19 experts here. And so I think that the FBI has
20 trusted them with some people that the Court would
21 feel less comfortable with them having it than
22 Ms. Jacks and their expert. That's sort of the
23 rationale I have. And with the very limited
24 disclosure, just to see whether there is anything
25 moving forward on this, given where we are, and they

1 have trial preparation, that's my rationale for doing
2 it.

3 MR. BECK: I understand that, Your Honor.

4 THE COURT: All right. With that, okay on
5 the cellphones, Mr. Lowry? Now we know what we're
6 doing with the devices?

7 MR. LOWRY: Yes, Your Honor. If we could
8 just get some guidance if our experts could work
9 collaboratively together or do you truly want us to
10 pick one --

11 THE COURT: Right at the moment, I think
12 that I'm going to get more cooperation with the FBI
13 if we have one. So let's -- I'll let Ms. Jacks pick
14 the one.

15 MS. JACKS: Actually, what I'd like to do,
16 Your Honor, if you don't mind, is confer with Mr.
17 Lowry and with Ms. Sirignano, and then between us
18 we'll pick the lawyer and the expert. How's that?

19 THE COURT: Okay. All right. And then let
20 the Court and Mr. Beck know.

21 MR. BECK: That's fine with the United
22 States.

23 THE COURT: And let's just have one expert
24 at the present time. And then, if this person finds
25 that something is there that needs further

1 disclosure, we can take it an incremental step at a
2 time.

3 Now, on the letter, do you need the
4 information still in the letter?

5 MS. JACKS: We really do, for our expert to
6 be able to know what needs to be done.

7 THE COURT: Let me ask Mr. Beck, do you
8 have a time frame in which you'll be responding to
9 the letter, Mr. Beck?

10 MR. BECK: I believe that they're working
11 on a response to the letter right now. So I don't
12 know the timeframe, but I would think it would be
13 quickly.

14 THE COURT: Why don't you propose one?

15 MR. BECK: A week from today.

16 THE COURT: Could you live with that,
17 Ms. Jacks?

18 MS. JACKS: I can.

19 THE COURT: All right. So a week from
20 today, unless we hear otherwise, we'll get a letter
21 from the Government with a response to Ms. Jacks'
22 letter.

23 Mr. Lowry?

24 MR. LOWRY: Your Honor, well --

25 THE COURT: You need to talk to Ms. Jacks

1 or -- y'all talk.

2 MS. JACKS: I think Mr. Lowry has just
3 reminded me that we owe some sort of disclosure
4 within two weeks. I'd ask that that disclosure be
5 within two weeks of when we get the Government's
6 response to the letter.

7 THE COURT: Give me what you have in two
8 weeks. I've got to stick tight on that deadline, or
9 I'm going to start making individual ones on the
10 defense side. And I can't do that. So give me what
11 you got in two weeks. And then you can supplement.

12 All right. Anything else on the phones,
13 the recording devices, Mr. Lowry, Ms. Jacks? Any
14 other defendants?

15 MR. LOWRY: No, Your Honor.

16 THE COURT: Mr. Beck, anything further on
17 that?

18 MR. BECK: No, Your Honor.

19 THE COURT: All right. So how does the
20 Government wish to proceed? Let's go to the -- why
21 don't we discuss where we were before lunch on how
22 the Government wants to -- whether they can live
23 with, even if they don't agree with -- live with my
24 operating rule for the Government gang expert.

25 MR. BECK: Your Honor, I don't think so. I

1 think we intend to put on our -- we've got two
2 experts here. We've got Chris Cupit and Ron Martin.

3 THE COURT: Those are both your gang
4 experts?

5 MR. BECK: Yeah. Sergeant Sapien is not
6 available right now.

7 THE COURT: Okay.

8 MR. BECK: But we've got them, we intend to
9 proceed with them.

10 But before we do that, we were hoping that
11 we could proceed with the James hearing, as it
12 concerns the Molina murder at this time. And then
13 stop that once we're done with the statements from
14 the Molina murder, and then probably at that time go
15 into the Daubert hearing for Mr. Cupit and
16 Mr. Martin.

17 THE COURT: All right. Any objections from
18 the defendants to so proceeding?

19 A. All right. Mr. Beck, do you wish to
20 present you -- or Mr. Castellano, if you want to
21 present your evidence or witnesses.

22 JAMES HEARING

23 MR. CASTELLANO: Yes, Your Honor. The
24 United States calls Special Agent Bryan Acee.

25 THE COURT: Mr. Acee, if you'll come up and

1 stand next to the witness box on my right, your left.
2 Before you're seated, Ms. Solis will swear you in.

3 BRYAN ACEE,
4 after having been first duly sworn under oath,
5 was questioned and testified as follows:

6 DIRECT EXAMINATION

7 THE CLERK: Take a seat and state and spell
8 your name for the record.

9 THE WITNESS: My name is Bryan Acee,
10 B-R-Y-A-N, A-C-E-E.

11 THE COURT: Mr. Acee, Mr. Castellano.

12 MR. CASTELLANO: Thank you, Your Honor.

13 Your Honor, I'm going to try to -- in terms
14 of organization, what we tried to do over the lunch
15 hour was probably break this down potentially by
16 witness, and by count or charge. So, as Mr. Beck
17 indicated, this is a discussion of statements related
18 to the Molina murder, which is Counts 6 and 7,
19 occurring on or about March 7, 2014.

20 BY MR. CASTELLANO:

21 Q. Okay. Agent Acee, I want to talk to you
22 about a witness named Lupe Urquizo. Are you familiar
23 with him?

24 A. I am.

25 Q. And have you had a chance to visit with him

1 and discuss any statements made in relation to the
2 Molina murder?

3 A. I have a couple times.

4 Q. Let me start with the statement by Anthony
5 Ray Baca to Mr. Urquizo about the Molina murder.
6 What do you recall about shot callers being
7 mentioned?

8 A. Mr. Urquizo told me that he had a
9 conversation with Mr. Baca, in which Mr. Baca told
10 Urquizo to get with the shot callers down at the
11 Southern New Mexico Correctional Facility, or
12 Southern, and to let them know that Baca wanted
13 Javier Molina hit. The "he" being Baca reiterated to
14 Urquizo to make sure those guys knew to take care of
15 Molina, and that if they didn't do it, he told
16 Urquizo to just stab him.

17 Q. When you say "stab him," who are you
18 referring to?

19 A. Molina.

20 Q. And do you know the approximate timeframe
21 in which these statements were made, how close in
22 time to when Mr. Urquizo was moved down to the
23 Southern facility?

24 A. I don't. I just recall off the top of my
25 head that it was before Urquizo went down while he

1 was still at the Level 6 up at PNM, the north
2 facility.

3 Q. And were you aware whether David Calbert
4 was involved with the paperwork from the north to the
5 south?

6 A. Yes, Urquizo told me that Calbert brought
7 him that paperwork.

8 Q. When we refer to the "paperwork," are we
9 talking about the paperwork indicating or
10 substantiating the hit on Javier Molina?

11 A. Yes, I believe specifically it was a
12 two-page LCPD report, or two pages from that report.

13 Q. What was the purpose of the report being
14 moved from the north facility down to the south?

15 A. Well, at the time there was some
16 disagreement within the SNM about the significance of
17 the paperwork. There had been some hits carried out
18 where it was on one or two members' word. And
19 members were now, at this time, insisting on actually
20 seeing the paperwork. So that was the significance
21 of the actual documents traveling down to the
22 south -- excuse me to the Southern facility, where
23 Molina was located.

24 Q. And just so the Court understands, when we
25 talk about PNM North and South, is that a different

1 facility than the Southern New Mexico Correctional
2 Facility?

3 A. It is. If you think of PNM as a campus, if
4 you will, there are different facilities there. So
5 the north facility is the Level 6. The south
6 facility is the Level 5. And then you also will hear
7 us talk about the Southern New Mexico Correctional
8 Facility, which is here in Las Cruces, which is
9 referred to as "Southern."

10 MR. DAVIS: Judge, we're having difficulty
11 hearing back here. If he could speak into the
12 microphone.

13 THE COURT: Pull it a little closer to you,
14 Mr. Acee.

15 Q. What did Mr. Urquizo say about conversation
16 that he and David Calbert had about the paperwork?

17 A. Well, Calbert explained to Urquizo that
18 Baca wanted the paperwork to go down to Southern in
19 Las Cruces. And Urquizo said, I already know,
20 because he'd already talked to Baca about that
21 paperwork going down.

22 Q. And at some point after that was Mr.
23 Urquizo transferred to the Southern New Mexico
24 Correctional Facility in or near Las Cruces?

25 A. Yes.

1 Q. Tell the Court about the conversation that
2 Mr. Urquizo had with Mario Rodriguez and Timothy
3 Martinez?

4 A. Urquizo had a conversation with both Mario
5 Rodriguez and Timothy Martinez once he arrived down
6 at Southern. At that time, Urquizo was in I believe
7 they call it orientation, so he wasn't out in the
8 population, so to speak, with the other inmates,
9 where he could freely talk. So they were passing
10 notes on a window.

11 And in the first note that Urquizo
12 received, it was from Mario Rodriguez and Timothy
13 Martinez, and they were asking about the paperwork on
14 Javier Molina and Jerry Montoya, because they had
15 been expecting paperwork for both. Urquizo wrote
16 back saying that he had the paperwork for Molina
17 only. He didn't have the paperwork for JR, for
18 Montoya. But that it was still in his property. As
19 he sat in this cell in orientation, he didn't have
20 his property.

21 So some additional conversations happened
22 the next day. A few of the other members came back
23 to find out if Urquizo had his property. And they're
24 passing notes again -- or holding notes up to the
25 window, excuse me.

1 So the following day, Carlos Herrera
2 inquired whether or not Urquizo had the paperwork.
3 Urquizo had just received his box of property. And
4 amongst that he had an envelope that he'd indicated
5 was his legal paperwork. And among dozens of other
6 documents from past cases were these two LCPD -- two
7 documents from the LCPD report that indicated Molina
8 cooperated or gave a statement to the police.

9 So he retrieved that and turned it over to
10 Carlos Herrera, Dale Chavez, Juan Mendez, Alex Munoz.
11 Those four "S" members reviewed the paperwork, and
12 each made a comment to the effect of, Damn, this is
13 it? It's just two sentences in this report.

14 Q. Did Mr. Urquizo and Mr. Herrera have any
15 other conversations related to the Molina hit?

16 A. They did. I'm just looking over my notes.

17 MR. VILLA: Your Honor, I don't have a
18 problem with Agent Acee refreshing his recollection.
19 But I'd ask that he not testify to his notes or have
20 them in front of him unless he's refreshing his
21 recollection.

22 THE COURT: Well, it's a James hearing.
23 You can cross-examine him about what he's looking at
24 and things, but I'll let him get this information out
25 to you in the form that the Government wants. But

1 you can cross-examine him about it. Overruled.

2 Q. Let me move forward to Mr. Rodriguez
3 showing the paperwork to Daniel Sanchez. Is there
4 any indication that Mr. Rodriguez wrote a letter to
5 Urquizo?

6 A. Yes.

7 Q. What did he do with it?

8 A. He sent it under the door. And in that
9 Rodriguez -- he communicated that Rodriguez and
10 Sanchez were going to move on Molina. Rodriguez
11 explained the plan. And apologized to Urquizo for
12 moving so quickly. And that the reason he did that
13 is during the Molina hit there were actually supposed
14 to be three individuals that were supposed to be hit
15 at the same time. However, the paperwork didn't come
16 down supporting the subject being hit that Urquizo
17 wanted hit. So that's what that apology was about.
18 And he wanted to -- he, Rodriguez -- wanted to make
19 sure that Urquizo wasn't upset about that fact. He
20 had a lot of respect for him, and just said, Hey,
21 we've got to move, and it's going to happen quickly.

22 And that was generally what was in that
23 letter. And Urquizo said he wrote back to Rodriguez
24 and said he understood.

25 Q. And I mentioned Rodriguez. Are we talking

1 about Mario Rodriguez?

2 A. Yes.

3 Q. I'm going to talk to you about something
4 that Mr. Urquizo heard Mr. Sanchez say during the
5 Molina hit.

6 A. It was actually what I would characterize
7 toward the end of the hit, because now the
8 correctional officers are starting to respond to the
9 pod, and they're running there en masse. And Urquizo
10 said he heard Daniel Sanchez yell, "Fuck, yeah."

11 Q. Okay. While we're on Mr. Urquizo, I'm
12 going to talk about a couple of statements related to
13 the Julian Romero assault.

14 MR. CASTELLANO: Your Honor, that's Count
15 8.

16 Q. Okay. While we're on him, what did you
17 learn from Mr. Urquizo about conveying information
18 regarding the Julian Romero assault?

19 A. Julian Romero was down here at the Southern
20 Facility at the time Urquizo and another member named
21 Jonathan Gomez were in charge of the pod. Word had
22 come down via Jonathan Gomez that they were to hit
23 Julian Romero. And they picked Conrad Villegas to do
24 that. They discussed that. They agreed to it, and
25 they gave that instruction to Conrad. And he

1 followed through with it.

2 The other thing that Urquizo related was
3 that it was important to Baca -- that is Anthony
4 Baca -- that Julian not be killed; that he just be
5 stabbed or beat up, but not killed.

6 Q. Let me go back to the Molina murder and
7 talk about Jerry Montoya. Are you aware of
8 statements that he made related to the Javier Molina
9 murder?

10 A. Yes.

11 Q. And were some of these statements made on
12 the actual day of the murder?

13 A. Yes.

14 MR. LOWRY: Your Honor, can I just raise a
15 quick objection. This happened so quickly, I didn't
16 realize there is two other witnesses that are in the
17 courtroom. Can we invoke the rule?

18 THE COURT: Who are your other witnesses
19 here?

20 MR. CASTELLANO: Nancy Stemo is one
21 witness, and --

22 MR. LOWRY: I believe it's Mr. Cupit.

23 MR. CASTELLANO: The two individuals in
24 back are Mr. Cupit and Mr. Martin, the experts for
25 the other hearing.

1 THE COURT: I think the experts can stay.
2 Do you have another witness you're presenting on the
3 James hearing?

4 MR. CASTELLANO: No, only -- Ms. Stemo is
5 the only one here in the court presently, so yes, she
6 would be the other witness.

7 THE COURT: On the James hearing?

8 MR. CASTELLANO: Yes.

9 THE COURT: Let's exclude her from the
10 proceedings. The experts can stay.

11 MR. CASTELLANO: All right. The witness
12 has left the room, Your Honor. So I'll proceed, if
13 that's okay with the Court.

14 THE COURT: You may.

15 BY MR. CASTELLANO:

16 Q. Okay. So tell us about what Mr. Rodriguez,
17 Mario Rodriguez, said or did with Mr. Montoya, that's
18 Jerry Montoya?

19 A. Mr. Montoya told me that sometime after
20 5:00 p.m., while in the pod, Mario Rodriguez called
21 out to him and told him to follow him to Rodriguez'
22 cell. Rodriguez gave Montoya a shank and said that
23 it was from Rudy Perez. Rodriguez told Montoya that
24 it was time to put in some work.

25 Montoya asked who, inquiring who was going

1 to be the recipient of the work, if you will. And
2 Rodriguez answered "Javier."

3 Montoya asked, "Why?"

4 And Rodriguez said, "Because he's a rat."
5 Montoya asked to see the paperwork, and Rodriguez
6 said that it had already been passed to another pod,
7 but that he didn't need to worry because he,
8 Rodriguez, had verified it, as had "Dan Dan" or
9 Daniel Sanchez. Montoya had some other questions and
10 asked where he was to actually hit Molina. Rodriguez
11 told him that it would be in Molina's cell.

12 Montoya protested a little bit and said
13 that he didn't think that would be a good location
14 because of the cameras. He argued about the angles
15 of the cameras with Rodriguez. And Rodriguez
16 ultimately said, "Dan doesn't want the cameras
17 covered. He has an evidentiary hearing coming up,
18 and needs to be seen on camera."

19 Q. When you say "Dan," who do you understand
20 that to be?

21 THE COURT: Do you have an objection, Mr.
22 Lowry?

23 MR. LOWRY: No. I just want to point out
24 for the record that Special Agent Acee was reading
25 off his notes, Your Honor, during that entire

1 response.

2 THE COURT: Okay.

3 MR. LOWRY: That wasn't an independent
4 recollection, but it was a direct recital from his
5 notes, Your Honor.

6 THE COURT: All right.

7 BY MR. CASTELLANO:

8 Q. We're going back to the question of who you
9 understood the "Dan" to be?

10 A. Daniel Sanchez.

11 Q. Ultimately, what was Mr. Montoya's
12 response?

13 A. He accepted the directive and said that
14 he'd help.

15 Q. Did he inquire whether anyone else would be
16 helping?

17 A. He did.

18 Q. What was Mr. Rodriguez' response?

19 A. Mr. Rodriguez explained to Mr. Montoya that
20 Jerry Armenta would also have a shank and would help,
21 and that Daniel Sanchez had already talked to Armenta
22 and Armenta was ready. He also told Montoya that
23 "Red," or Timothy Martinez would be helping; that
24 he'd go into Molina's cell and get him high, and then
25 knock him out, so that the two Jerrys, Jerry Montoya

1 and Jerry Armenta, could come in and commence with
2 stabbing Molina.

3 Q. So is it your understanding that Timothy
4 Martinez was supposed to knock out or incapacitate
5 Mr. Molina before he was stabbed?

6 A. Yes.

7 Q. What happened when Mr. Montoya went back to
8 his cell?

9 A. Dan Sanchez came in sometime later and
10 asked, "You know what's up?"

11 Montoya said, "Yeah."

12 Sanchez said, "Okay, be trucha," which I
13 understand to mean to be careful or to watch out.

14 Q. And was there any conversation between
15 Jerry Montoya and Jerry Armenta related to the Molina
16 murder?

17 A. Yes, Armenta explained that he was -- he,
18 Armenta -- was perching in front of his cell, which
19 is just kind of squatting and hanging out. Daniel
20 Sanchez signaled for Montoya to go upstairs because
21 he'd been downstairs.

22 Montoya did. After getting to the top of
23 the stairs, he squatted next to Armenta, and in a low
24 voice said to him, said to Armenta that, "It's him or
25 us," and by "him," he was referring to Molina. And

1 Armenta basically repeated the same thing back, like,
2 "Yeah, it's either him or us."

3 Q. Let me turn your attention to statements
4 taken from Timothy Martinez. You referred to Timothy
5 Martinez as also related to the Molina murder?

6 A. I have several times.

7 Q. What do you recall about Timothy Martinez
8 saying that Mario Rodriguez said to him that he was
9 supposed to do before the Molina murder?

10 A. So on the morning of the Molina murder, Tim
11 Martinez had come back from his work detail at the
12 wheelchair program. And shortly after entering the
13 pod, Mario Rodriguez called him over, and then told
14 him to go get high. Timothy thought that was an
15 unusual request. I think he described himself as not
16 a regular user of drugs. And so he asked Mario why.
17 Mario Rodriguez again told him, "Just trust me. Go
18 get high." And Timothy kind of objected to that and
19 kept questioning him. So Mario said, "Sit down, I'll
20 explain what's going on." And then they had a
21 conversation about what was to take place.

22 Q. Did the conversation cover the paperwork on
23 Javier Molina?

24 A. Yes.

25 Q. What was explained to Mr. Martinez by Mario

1 Rodriguez?

2 A. It was explained to him that the paperwork
3 on Molina had arrived; that he was a snitch, and that
4 he was to get hit. And then from there they went
5 into more detail.

6 Q. And what did Mr. Rodriguez tell Timothy
7 Martinez what Daniel Sanchez said about Martinez
8 getting involved?

9 A. That Daniel Sanchez wanted Timothy to go,
10 to be on the mission.

11 Q. When you say "the mission," what are you
12 talking about?

13 A. To hit Molina. And that Daniel Sanchez had
14 insisted on Martinez participating. Specifically
15 Rodriguez said, "Dan is making you go."

16 Martinez said, "Okay. What do I have to
17 do?"

18 Rodriguez answered, "Dan wants you to go
19 into the room and beat him up so he can't leave." By
20 "him," that would be Molina. "So that he can't leave
21 the room and Jerry and Jerry" -- being Montoya and
22 Armenta -- "will go in and hit him. They have some
23 bone crushers. And Molina has to go." By bone
24 crushers, that's a slang term for larger shanks.

25 Q. What was Martinez' response to that?

1 A. He said, "Okay, I'm going to go get high."

2 Q. So was that an indication that he was going
3 to go get high in preparation for the Molina murder?

4 A. Yes.

5 Q. At some point was there an indication by
6 Mr. Martinez that Daniel Sanchez talked to him about
7 the Molina murder?

8 A. Yes. Sanchez was in the cell next door to
9 Martinez and began pounding on the wall. Sanchez
10 asked of Martinez, "Did 'Blue' talk to you" --
11 something to that effect, "'Blue' talk to you yet?"
12 And Martinez told him that he, "Blue," or Rodriguez
13 had talked to him.

14 Q. What was Daniel Sanchez' explanation to
15 Timothy Martinez about why he should be involved?

16 A. What Martinez told me -- and this is a
17 direct quote -- "You've got to do this. You got to
18 earn your huesos," or your bones.

19 Sanchez went on about how the SNM had lost
20 respect over the years, and they needed to take
21 things back to the old days when the S used violence
22 to get respect. Sanchez said, "S is about violence.
23 We get respect through violence." Martinez said that
24 he questioned Sanchez about why Molina had to be hit
25 and why he needed to be involved in it. Why he,

1 Martinez, needed to be involved in it.

2 Q. What was Daniel Sanchez' explanation?

3 A. He basically said that Martinez hadn't done
4 anything yet. He hadn't earned his bones, hadn't
5 committed any violent acts, and that he needed to do
6 something more significant than just bring drugs into
7 the institution.

8 Q. And did Mr. Sanchez give any ultimatum to
9 Timothy Martinez related to this hit?

10 A. Yes. Martinez told me that Sanchez told
11 him he'd have to do it or else. And Martinez took
12 that to understand that "or else" would be you need
13 to do this or you're going to get hit.

14 Q. Now, did Mario Rodriguez at some point
15 explain to Timothy Martinez that he didn't want him
16 to go? By that I mean go to commit the murder?

17 A. Yes. As Mr. Martinez explained it, they
18 were friends, and that he had lobbied -- he, Mario
19 Rodriguez -- had lobbied to have Timothy not go and
20 to get a pass on it. But that Daniel Sanchez had
21 insisted. And Rodriguez said -- and this is a quote
22 -- "But if it's your time, you've got to go. You got
23 to do this for the family. Then it will be someone
24 else's time."

25 Q. Did Mr. Martinez indicate that he

1 understood?

2 A. He did.

3 Q. And was there an explanation by Mr.
4 Martinez about something to do with Mr. Molina's
5 shank?

6 A. Yeah, quite by coincidence, Molina -- I
7 mean, he had a shank, but he gave it to Timothy
8 Martinez that morning. He was going to go shower, if
9 I recall. And he said, Here, hold my shank, hold my
10 fiero, or whatever term he used. And Timothy
11 Martinez took the shank and put it in his cell in his
12 commissary bag. Timothy Martinez related that to
13 Mario Rodriguez. And I think they both just thought
14 it was, based on their comments, good fortune on
15 their part that Molina wouldn't have a shank and be
16 able to fight back.

17 Q. And what was Mr. Rodriguez' comment to
18 Timothy Martinez about having taken the shank?

19 A. He said, "Perfect, now he can't stab you."

20 Q. Let me turn your attention to after the
21 assault or close in time to the assault. Did Mr.
22 Rodriguez say anything to Mr. Martinez about not
23 saying anything to others?

24 A. He did. He told them to stay quiet and
25 that everything would be okay.

1 Q. I want to also go back to where the shank
2 came from. What did Timothy Martinez explain about
3 at least one of the shanks?

4 A. Martinez told me that Sanchez, Daniel
5 Sanchez, had obtained one of them from who they
6 referred to as "Fat Ass," which was sort of a
7 in-house nickname for Rudy Perez. Sanchez had told
8 Martinez that Perez had given him two pieces of metal
9 from his walker, and that that's what they'd made the
10 shanks out of. Sanchez had made the comment to
11 Martinez, "What else is Fat Ass going to do?" And
12 actually, the comment made after that was Martinez'
13 opinion. So that concluded what Sanchez said about
14 that.

15 Q. I want to turn your attention now to
16 statements by Anthony Baca about keeping an eye on
17 Javier Molina or any distrust about him.

18 A. Okay.

19 Q. Is there any indication that Anthony Baca
20 was suspicious of Molina?

21 A. Yes. Martinez -- and this is all taking
22 place after the Molina murder; this is well after,
23 almost two years later. Baca and Martinez are
24 incarcerated up at the Level 6 at PNM North. And
25 Baca told Martinez, "If they would have let me out,

1 Javier wouldn't be dead, and that man would still be
2 alive. But they didn't, and what's done is done.
3 When they wouldn't let me out we had to make a
4 statement. They called my bluff. And now they have
5 a dead man on their hands."

6 Q. Was there ever any indication that Mr. Baca
7 had kept in touch with Jonathan Gomez?

8 A. Yes.

9 Q. And what was that discussion?

10 A. Jonathan Gomez, or "Baby G," was and is
11 often referred to as Mr. Baca's protege, and that
12 communications would come down to other members
13 through Jonathan Gomez, and that Jonathan Gomez had
14 related to Timothy Martinez and others that "Pup"
15 didn't trust Molina and to -- they should keep their
16 eye on Molina.

17 Q. What can you tell the Court about a
18 statement by Mr. Sanchez about people just going back
19 to the old ways and not just beating people up
20 anymore?

21 A. I thought I might have already covered
22 that, but I can go back to that.

23 Daniel Sanchez had told Martinez and others
24 within the S that the gang needed to go back to the
25 old ways, and that there would be no more just

1 beating people up. Sanchez said, "We're going to
2 take it back to where the S is feared and respected.
3 No more jumping people. We'll kill so people know
4 there are consequences."

5 (Mr. Benjamin entered the courtroom.)

6 Q. I'll turn your attention to a January 26
7 statement by Timothy Martinez. That's going to be a
8 statement relating to Javier Molina when they were in
9 the cell with him. What was said at that point?

10 A. I had some follow-up questions for Mr.
11 Martinez after the first debrief. So I specifically
12 asked what conversation or what statements were made
13 by Mario Rodriguez when they were in the cell, in
14 Molina's cell. And Martinez said that Mario
15 Rodriguez was standing in the doorway. And as Molina
16 was getting up, Mario Rodriguez said, "He's getting
17 up. What the fuck?"

18 Q. And was Mr. Molina supposed to be getting
19 up or was he supposed to be incapacitated?

20 A. No, he was supposed to be knocked out.

21 Q. Let me turn your attention now to
22 statements by Mr. Baca to Mr. Martinez about hitting
23 Corrections Department officials.

24 MR. CASTELLANO: Your Honor, this is now
25 going to relate to Counts 9 and 10. That's the

1 conspiracy to murder Dwayne Santistevan, and Count 9
2 and 10 is conspiracy to murder Gregg Marcantel.

3 Q. So if you can, what did Mr. Baca say to Mr.
4 Martinez about hitting corrections officials?

5 A. This conversation took place after Baca
6 kind of went on a rant with Martinez about Javier
7 Molina, and the fact that the Corrections Department
8 should have listened to him, Baca.

9 Baca told Martinez that there was stuff in
10 the works for Marcantel and Santistevan.
11 Specifically, he said that he'd like to get the
12 wardens, too. Baca explained that to Martinez, that
13 "If we hit them, what's the worst that's going to
14 happen? They'll send us out of state, but then
15 they'll ship us back. And then they'll know we're
16 for real. It started with Javier Molina, and now it
17 continues. Javier was a building block for bigger
18 jobs for Marcantel and for the respect we once had."

19 Q. And what about statements relating from --
20 to Timothy Martinez by Mr. Garcia, Christopher
21 Garcia?

22 A. That conversation took place after the
23 first wave of indictments and take-down arrests.
24 When they were out at the Otero prison facility,
25 Martinez said that Chris Garcia -- they were actually

1 talking about the guy named Jeremiah Martinez, a/k/a
2 "Cyclone." And the conversation turned to Gregg
3 Marcantel. At the time, Chris Garcia was upset about
4 the situation and blamed it on Baca. He specifically
5 said to Martinez, "Pup" -- which is an alias for Baca
6 -- "called me saying he needed guns. It was right
7 after the Holly Holmes fight and people were shooting
8 guns in the air. So "Pup" tells me he needs some
9 guns for a job to hit Marcantel and Santistevan. And
10 I thought: Who the fuck is going to do that? 'Pup'
11 was talking all drunk, saying Krazo" -- who is Eric
12 Duran -- "had a phone. I didn't trust Krazo so
13 anyway."

14 Q. And that was a statement by Christopher
15 Garcia?

16 A. It was. He and Martinez continued to talk
17 about it. And that's where this Jeremiah Martinez
18 comes up, and how they acquire the firearm that's to
19 be used.

20 Q. What was the nature of that conversation?

21 A. Garcia was kind of laying out what happened
22 with the Marcantel and the Santistevan hit, or the
23 planned hit, and why it was so screwed up. And he
24 said, "I called 'Cyclone'" -- in this case that's
25 Jeremiah Martinez -- "for the guns. He gave me some

1 piece of shit .22 or .25" -- caliber. "Those fucking
2 things weren't going to do shit. They would have
3 just made Marcantel mad. 'Cyclone' claimed it was
4 good one. He had used it a few times." And Garcia
5 said, "It was a piece of shit, maybe one or two shots
6 because the clip was all fucked up."

7 Q. All right. Let me turn your attention now
8 to statements taken from Jerry Armenta.

9 A. Mr. Castellano, I am happy to do that one,
10 but I think Agent Stemo was on that one.

11 Q. Oh, was she on that one?

12 MR. CASTELLANO: Your Honor, at this point,
13 I pass the witness related to these statements.

14 THE COURT: All right. Thank you, Mr.
15 Castellano.

16 Who wants to go first? Mr. Villa?

17 MR. VILLA: I'm happy to, Your Honor.

18 THE COURT: Do you want to go first? Y'all
19 decide. I'm not --

20 MR. LOWRY: No, Your Honor. Under Rule
21 613, I believe we're entitled to see Mr. Acee's
22 notes. I mean, he's read extensively from his notes
23 throughout his entire testimony.

24 MS. JACKS: I would join.

25 MR. LOWRY: I think, Your Honor, if we

1 could take an afternoon recess to allow the defense
2 teams an opportunity to review the notes, which we're
3 entitled to do under Rule 613.

4 THE COURT: You can look at the notes. But
5 let's go ahead with cross-examination. Who is going
6 to do the cross-examination?

7 MR. VILLA: I'm not concerned about the
8 order, but I think the purpose of looking at the
9 notes would be to aid the cross-examination.

10 THE COURT: Well, take a look at them. Ask
11 him for them.

12 MR. VILLA: Do you want us to do it now?

13 THE COURT: You can do it now. But let's
14 keep the pace up on cross-examination. It's a little
15 bit of an ordeal getting people in and out, so --

16 MR. LOWRY: Your Honor, is it okay if I sit
17 next to him?

18 THE COURT: You bet. You can look at it
19 together.

20 MR. CASTELLANO: Your Honor, I'll object to
21 the extent that many of those are not his statements.
22 613 refers to his statements. So for any of those
23 not prepared by Agent Acee, I would object.

24 MS. JACKS: I think it's 612, and I think
25 if he looks at any writing, we're entitled to see it.

1 THE COURT: You can look at the notes.

2 MS. JACKS: Your Honor, it's 24 pages.

3 There are how many attorneys here attempting to read
4 it. I'm wondering if we could get some copies made
5 before we proceed.

6 THE COURT: I'm sure y'all have some
7 questions of Mr. Acee about his testimony. Y'all
8 have been waiting for it for a while, so I'm sure
9 there are some things you can do. Y'all can take the
10 notes back. One of you can start asking some
11 questions that you've been wanting to ask him for a
12 while.

13 MR. VILLA: Your Honor, I've got a few
14 questions that I'll ask while my colleagues are
15 looking at these, and let them clean it up
16 afterwards, I guess.

17 THE COURT: All right. Go ahead, Mr.
18 Villa.

19 EXAMINATION

20 BY MR. VILLA:

21 Q. Agent Acee, good afternoon.

22 A. Good afternoon.

23 Q. Let's start with the conversations you
24 relayed from Mr. Urquizo. I believe you testified --
25 and I'm just going to jump ahead to the point in time

1 when Mr. Urquizo and Mario Rodriguez and Timothy
2 Martinez are passing notes.

3 A. Yes.

4 Q. So this occurred at Southern New Mexico
5 Correctional Facility?

6 A. Yes.

7 Q. At the time Mr. Urquizo had been recently
8 transferred to Southern New Mexico from PNM?

9 A. Correct.

10 Q. When was Mr. Urquizo transferred?

11 MS. ARMIJO: Your Honor, if I may, I
12 believe they've taken Agent Acee's notes to go and
13 make copies of. Some of his notes may not have been
14 disclosed yet. We don't mind them looking at them.
15 But we do object to the defense making copies of
16 them, which we don't have control of.

17 THE COURT: Don't make copies. That wasn't
18 what I intended. So somebody go back and do that.
19 That's not what I said you could do. I said you
20 could look at them.

21 MS. ARMIJO: Sorry, Your Honor.

22 THE COURT: Mr. Villa.

23 A. Mr. Villa, off the top of my head, I'm not
24 sure the exact dates of what his transfer were.

25 Q. Can you tell me relative in time to when

1 Mr. Molina was murdered?

2 A. Right before.

3 Q. When you say right before, we're talking
4 just days?

5 A. Days. Because, as I recall, the
6 orientation is two days, so it was within two or
7 three days.

8 Q. And orientation, that's the point when
9 someone is brought to a new facility and they're not
10 released to population and they go through some sort
11 of process?

12 A. I believe that's correct.

13 Q. It's your understanding that period is
14 approximately two days?

15 A. That's my understanding.

16 Q. So Mr. Urquizo gets transferred down to
17 Southern from PNM -- and I tend to refer to
18 Southern -- Las Cruces as Southern, and PNM South as
19 the South, if that's okay?

20 A. I agree with you.

21 Q. Okay. So Mr. Urquizo is transferred down
22 to Southern. And within a couple of days he's out of
23 the orientation?

24 A. Correct.

25 Q. And isn't it true that he was placed into

1 what I'll call yellow pod. I don't know the exact
2 number, but that's the name of the housing unit that
3 he was in?

4 A. My recollection is the same.

5 Q. The adjacent housing pod is blue pod;
6 correct?

7 A. Yes.

8 Q. And it's in the blue pod where Mr. Molina
9 was?

10 A. Yes.

11 Q. It's in the blue pod where Mr. Molina was
12 attacked and stabbed and murdered?

13 A. Yes.

14 Q. So while the inmate is in orientation, they
15 don't get to get out into the pod?

16 A. That's my understanding. I've not
17 witnessed that. I've never worked for Corrections,
18 but that's how it's been explained to me.

19 Q. Explained to you by those in Corrections?

20 A. Yes.

21 Q. And when these conversations took place
22 between Mr. Urquizo, was it after orientation -- I'm
23 sorry, Mr. Urquizo, Mario Rodriguez, and Timothy
24 Martinez?

25 A. I think that it's happening as part of the

1 orientation process. And I say that because Mr.
2 Urquizo was not free to exit his cell, so his house
3 or his cell was closed, and he was having to pass
4 notes through a window and converse through a door.
5 I just don't know enough about the orientation. But
6 at some point he arrives at the facility and there is
7 an orientation and he ends up assigned to yellow pod.

8 Q. And within yellow pod he's got his own
9 cell?

10 A. That's my understanding, yes.

11 Q. The cell is shut and locked during
12 orientation?

13 A. Yes.

14 Q. He can't get out of that cell?

15 A. Again, I've never been there. That's
16 what's been explained to me. I haven't witnessed it
17 or observed anyone go through orientation, but that's
18 my understanding from talking to Corrections folks
19 and the cooperating defendants.

20 Q. Is that how Mr. Urquizo explained it to
21 you?

22 A. Yes.

23 Q. Mario Rodriguez and Timothy Martinez were,
24 I think you testified on direct, passing notes
25 discussing with Urquizo the paperwork that he had?

1 A. Yes.

2 Q. Mario Rodriguez and Timothy Martinez were
3 housed in blue pod; correct?

4 A. Correct.

5 Q. The adjacent pod?

6 A. Yes.

7 Q. And those two pods are separated by a door?

8 A. A couple.

9 Q. And if you will, the pods -- I kind of
10 think of them as pie-shaped, where the control center
11 is at the tip of the pie, and the crust of the pie
12 would be where the cells are?

13 MR. CASTELLANO: Objection, Your Honor.
14 This isn't related to any statements. We're only
15 talking about statements at this point.

16 THE COURT: Well, give me -- tie it in to
17 what the James hearing is about.

18 MR. VILLA: Well, I'm trying to determine
19 how these conversations took place between Timothy
20 Martinez and Mario Rodriguez when they're in an
21 adjacent pod.

22 THE COURT: I'm going to give defense
23 counsel a little leeway. Keep it tight to the
24 statements here. But overruled.

25 Q. Just to paint the picture real briefly:

1 There is two stories, the top cells and bottom cells;
2 correct?

3 A. Correct.

4 Q. And if you put two pie crusts together,
5 that's where the two pies sort of adjoin each other?

6 A. Yes.

7 Q. And that door between the two pods doesn't
8 get opened?

9 A. It shouldn't.

10 Q. So it's your testimony that Urquizo tells
11 you he's passing notes of some kind between Mario
12 Rodriguez and Timothy Martinez discussing the
13 paperwork that he has brought down?

14 A. Would you like me to explain that, sir?

15 Q. Well, did I state your testimony correctly?

16 A. Yes.

17 Q. Okay. Now, you want to provide an
18 explanation of how that took place?

19 A. Just what Urquizo told me.

20 Q. What did Urquizo tell you?

21 A. That "Blue" and "Red" -- or, excuse me,
22 Rodriguez and Martinez, were on some kind of -- I
23 don't know if it was a cleaning detail or a work
24 detail or painting or something, where they were
25 outside the pod, able to walk by yellow pod. So they

1 held up notes. They're standing outside yellow pod,
2 holding up a note on the glass to that entry door.
3 And Urquizo would either motion, or at some point he
4 did write a note back.

5 Q. And "Blue" and "Red," sometimes it's
6 easier -- Mario Rodriguez is "Blue"; right?

7 A. Yes.

8 Q. Timothy Martinez is "Red"; correct?

9 A. Yes.

10 Q. Those are their nicknames?

11 A. Yes.

12 Q. You indicated that Mr. Urquizo at one point
13 wrote back that he had paperwork on Javier Molina but
14 not on Jerry Montoya?

15 A. Correct.

16 Q. Did you determine how it was that Mario
17 Rodriguez or Timothy Martinez would have known that
18 Urquizo had this paperwork?

19 A. Well, it was -- my understanding was that
20 it was anticipated -- highly anticipated -- and
21 Urquizo explained it as everybody was really excited,
22 like the place came alive when he came down on the
23 transport with Varela.

24 Q. Urquizo came down with Mauricio Varela?

25 A. Yes.

1 Q. But he didn't tell you how it was that
2 these individuals were excited or anticipated that he
3 had this information?

4 A. No, he just explained it as -- I mean,
5 there had been failed attempts before. The order had
6 come down at least three times. So this time it was
7 being talked about again. But this time, paperwork
8 was actually supposed to show up. So people were now
9 asking: Did the paperwork show up?

10 MS. JACKS: Your Honor, I'm going to
11 object. This is unclear whether this is a narrative
12 of this witness, or something that Urquizo told him.

13 THE COURT: Well, I'll let Mr. Villa
14 control his own cross-examination. Overruled.

15 Mr. Villa.

16 Q. Let me ask you this: Mr. Urquizo told you
17 that the order had been made three different times?

18 A. Well, several defendants have told me that.
19 Urquizo was one of them. I'm struggling to remember
20 exactly how he said it. But I've heard that from
21 several defendants.

22 Q. Let's focus on Urquizo. Your testimony is
23 that Urquizo told you the order had come to kill
24 Javier Molina three separate times?

25 A. More than once.

1 Q. More than once?

2 A. Yes.

3 Q. From whom did he say the order came?

4 A. I couldn't say as I sit here.

5 Q. Now, you indicated that there was
6 communication between Urquizo and "Blue," Mario
7 Rodriguez, where Mario Rodriguez apologized that one
8 of the three people supposed to be hit wasn't part of
9 this plan; correct?

10 A. Correct. I can't recall his name, but yes.

11 Q. The name of the third person?

12 A. Yeah, he was someone in yellow pod, I
13 believe.

14 Q. The other two would be Javier Molina and
15 Jerry Montoya?

16 A. Yes.

17 Q. But you don't remember the name of the
18 third person in yellow pod?

19 A. I think it's in my report, which I don't
20 have in front of me anymore.

21 Q. The one that was taken off --

22 A. Yes.

23 Q. See if we can get that back.

24 MR. LOWRY: May I approach the witness,
25 Your Honor?

1 THE COURT: You may.

2 Q. Mr. Acee, would you take a look at your
3 notes and see if that refreshes your recollection as
4 to who the third person was?

5 A. You know what, sir, it doesn't, because I
6 have a mixture of 302s here, with reports I've
7 written. And I also just have some Word documents
8 with notes. And for Urquizo I just have notes
9 pertinent to what I thought I'd be testifying about
10 today. So I don't actually have my 302 on that
11 interview. I'm sorry.

12 Q. All right. We'll see if we can't find it
13 while I'm finishing up here.

14 And I take it, because you didn't testify
15 to it, that at no point in the communications with
16 Mr. Urquizo and Mario Rodriguez did Mario Rodriguez
17 explain how they were going to try to obtain shanks
18 to use on Javier Molina?

19 A. No. Urquizo didn't relate that to me.

20 Q. And at any point in any communication you
21 had with Mr. Urquizo, he did not relate to you that
22 he had knowledge about the source of the shanks used
23 on Javier Molina?

24 A. That's a tricky one. Because after the
25 fact, everybody talks about it. So that wasn't --

1 I'm not sure how to answer that. After the fact, a
2 lot of guys knew about it. But they didn't have what
3 I'd call direct knowledge at the time. They heard
4 about it later.

5 Q. So other cooperating defendants, other
6 folks had heard, via rumor or otherwise, the source
7 of the shanks?

8 A. Lots of people heard about it after the
9 fact.

10 Q. You testified that one of the things Mr.
11 Urquizo stated in his conversation with Anthony Baca,
12 while still up at PNM, was that Mr. Baca wanted
13 Urquizo to get in touch with the shot callers down at
14 Southern?

15 A. Correct.

16 Q. Who were those individuals?

17 A. I don't know. I don't know that Urquizo
18 knew until he got there.

19 Q. Mr. Urquizo didn't relay that Mr. Baca
20 identified a specific person?

21 A. No, his specific term was "shot callers."

22 Q. Was it understood that Mr. Urquizo would be
23 able to figure that information out or -- is that
24 what it is?

25 A. Yes. I don't think it's difficult.

1 Q. Mr. Baca didn't know?

2 A. I don't know what Baca knew. What Urquizo
3 told me was: "Get in touch with the shot callers at
4 Southern. I think there are different ones in each
5 pod."

6 Q. I'm going to jump now to Jerry Montoya. I
7 believe it was your testimony that Jerry Montoya told
8 you that Mario Rodriguez talked to him and provided
9 him a shank for the killing of Javier Molina?

10 A. Yes.

11 Q. And it was your testimony he said that the
12 shank was from Rudy Perez?

13 A. Yes.

14 Q. That's the extent of what Jerry Montoya
15 told you on that subject, right; the shank was from
16 Rudy Perez?

17 A. On the subject of Rudy Perez?

18 Q. This statement that Mario Rodriguez made to
19 Jerry Montoya, the shank was from Rudy Perez, right,
20 Jerry Montoya didn't tell you anything else about
21 that statement, did he?

22 A. I'd have to refer to my 302s. I did more
23 than one debrief of Jerry. But, yeah, I'd want to
24 review my reports.

25 Q. Let me ask you this: Before we get into

1 those reports, did it matter to Mario Rodriguez --
2 when you were interviewing Jerry Montoya, did it
3 matter the source of the shanks that Mario Rodriguez
4 provided to him, or just that he provided the shank?

5 A. Did it matter to me?

6 Q. Did you glean from the conversation between
7 Jerry and Mario Rodriguez that it made any difference
8 where the shanks came from?

9 A. I don't know that I understand.

10 Q. Well, I guess what I'm trying to say is
11 whether Mario Rodriguez provided the shanks to Jerry
12 Montoya, the purpose of that was to execute the hit
13 on Javier Molina; correct?

14 A. Right.

15 Q. And he was providing him a murder weapon?

16 A. Correct.

17 Q. It didn't matter where the murder weapon
18 came from, as far as you understood that
19 conversation, right?

20 A. No.

21 Q. There were other shanks in the pod; you
22 knew about that?

23 A. Yes.

24 Q. Other places to get shanks from?

25 A. I believe so.

1 Q. And it was clear from the conversation that
2 what Mario wanted was for Jerry Montoya to use that
3 shank and stab Javier Molina?

4 A. Right.

5 Q. Regardless of where the shank came from?

6 A. Correct.

7 MR. VILLA: May I have just a moment?

8 THE COURT: You may.

9 Q. Let's turn to Timothy Martinez. You said
10 that Mr. Martinez told you -- I think this is the day
11 that the hit goes down, but he'd gotten back from his
12 work detail at the wheelchair program.

13 A. Yes.

14 Q. And the wheelchair program is a program
15 that's at Southern, where inmates fix up wheelchairs
16 and walkers and things like that?

17 MR. CASTELLANO: Objection, Your Honor.
18 We'd ask that we not make this a discovery
19 expedition, but focus on the statement again.

20 THE COURT: Tie that into the James
21 hearing.

22 MR. VILLA: Well, Your Honor, the second
23 element for Mr. Perez is whether they can prove that
24 he was a participant in the conspiracy with Javier
25 Molina. And I think to do that they're asserting

1 that the shank came from Mr. Perez' walker, and this
2 wheelchair program is another source of shanks that
3 are going to be similar or exactly the same as the
4 one that the Government claims is Mr. Perez'?

5 THE COURT: Well, I'll allow a little
6 leeway here. It's kind of hard to cabin this stuff.
7 But if it goes too far afield, renew your objection.
8 Overruled.

9 A. You were asking me what the purpose of the
10 wheelchair program was?

11 Q. That's right.

12 A. I think that the inmates at Southern at
13 that time could construct wheelchairs that I think
14 were sent overseas. I don't know if they made
15 walkers. My understanding, walkers are something
16 that's checked out from the medical facility, or
17 assigned to an inmate by medical staff. So I think
18 there is a distinction there.

19 Q. All right. So setting aside walkers that
20 come from medical staff to inmates that need a
21 walker, you don't know whether walkers were in the
22 wheelchair program, as one of the things that inmates
23 would fix up?

24 A. I've not heard that, no.

25 Q. Okay. So now I want to talk to you about

1 the conversation between Timothy Martinez and Daniel
2 Sanchez, where there is this conversation again about
3 the source of the shanks used for Javier Molina's
4 killing. Did I understand your testimony to be that
5 that conversation took place after the assault?

6 A. Do you mind if I look at my report?

7 Q. By all means.

8 A. I have three 302s here, debriefs of Timothy
9 Martinez.

10 Now, the first conversation that Martinez
11 and Sanchez had, it was what I would characterize as
12 Sanchez verifying, where he was asking: "Did 'Blue'
13 talk to you yet? Do you know what you need to do?"
14 So there was that conversation which would have
15 happened before.

16 Q. And during that conversation they discussed
17 the shanks that Mario Rodriguez was providing?

18 A. I don't see anything -- in that initial
19 conversation, I don't see anything referencing the
20 shanks. It's more about the loss of respect for the
21 S over the years.

22 Q. Okay. And earning your bones, that sort
23 thing?

24 A. Yes, sir.

25 Q. When did you understand the conversation

1 between Timothy Martinez and Dan Sanchez had taken
2 place regarding where the shanks came from?

3 A. I'm on page 8 of my 302, my December 29,
4 2016 debrief of Timothy. It's on page 8, toward the
5 bottom. Do you want me to read it?

6 Q. Well, does that refresh your recollection?

7 A. Yes, sir.

8 Q. Why don't you tell me in your own words
9 when you understood that conversation to have
10 occurred.

11 A. I asked Timothy to tell me about the
12 shanks. And that's when he related that Daniel
13 Sanchez told him he got them from Rudy Perez. He
14 used a different name for him, a nickname. But
15 that's when he mentioned that.

16 Q. But he didn't tell you when the
17 conversation took place?

18 A. No.

19 Q. So you don't know when that conversation
20 occurred?

21 A. I think it may have happened after. But
22 that's just my opinion.

23 Q. So you're speculating? I mean, you didn't
24 ask Mr. Martinez when it occurred?

25 A. Correct.

1 Q. You didn't ask him: Did this occur before
2 or after the assault?

3 A. That's right.

4 Q. Now, whenever this conversation took place,
5 it's your testimony that "Dan Dan" told Timothy
6 Martinez that Rudy had given him two pieces?

7 A. Yes.

8 Q. And he said something to the effect of what
9 else is "Fat Ass" going to do?

10 A. That's what Martinez related to me, yes.

11 Q. And Martinez didn't -- related to you what
12 Daniel Sanchez was saying to Timothy Martinez?

13 A. Correct.

14 Q. And Martinez didn't ask Daniel Sanchez to
15 clarify that statement as far as you know, right?

16 A. I don't think he did.

17 Q. So "What else is 'Fat Ass' going to do"
18 could mean: He's sick, he's lying in bed, he's not
19 going to be able to fight us; we're going to take his
20 stuff?

21 A. That's not my interpretation of that.

22 Q. But you didn't ask?

23 A. Correct.

24 Q. And you don't know?

25 A. I have an idea. But I didn't ask that

1 question.

2 Q. Okay. Whatever your idea is, you're
3 speculating?

4 A. Yes.

5 MR. VILLA: Your Honor, I'm going to pass
6 the witness on to colleagues. But if I may, I may
7 have a few follow-up questions.

8 THE COURT: All right. Thank you, Mr.
9 Villa.

10 Mr. Adams, did you want to go next?

11 Mr. Lowry?

12 Ms. Jacks, do you want to go?

13 MS. JACKS: I'll defer.

14 THE COURT: Mr. Lowry?

15 EXAMINATION

16 BY MR. LOWRY:

17 Q. Good afternoon, Special Agent Acee.
18 Special Agent, you said you spoke to Lupe
19 Urquizo?

20 A. Yes.

21 Q. And according to your testimony earlier
22 today you said that Mr. Urquizo claimed that he had
23 spoke with Mr. Baca?

24 A. He did.

25 Q. And where did that conversation take place?

1 A. I believe that took place at the Level 6,
2 the north facility.

3 Q. Level 6 is the most secure facility in the
4 New Mexico Department of Corrections; isn't that
5 right?

6 A. You're correct.

7 Q. Inmates aren't free to roam the halls of
8 Level 6, are they?

9 A. No. I think there are some exceptions
10 for -- I think they call them porters and stuff like
11 that, but generally, no.

12 Q. Did you ever -- how do you know these two
13 individuals were in a position to speak with each
14 other?

15 A. I don't. I'm just reporting what Urquizo
16 told me.

17 Q. So for all you know -- well, when you spoke
18 to Mr. Urquizo it was with a debrief with the United
19 States Government; correct?

20 A. I don't think so. I think the first time I
21 just went up to the penitentiary, and introduced
22 myself. I don't think he had an attorney at that
23 point.

24 Q. And he was at Level 6?

25 A. He was at 5 or 6, so he was either at the

1 South, or he was at the North. I'm not sure.

2 Q. So you don't recall where you met with him?

3 A. I met with him at PNM. And it's limited
4 where I can meet with these guys and talk to them.
5 But actually, come to think of it, I think it might
6 have been at the South, at the Level 5.

7 Q. Would it refresh your recollection if you
8 looked at your 302?

9 A. It would, except that I don't have it in
10 front of me. I don't have the Urquizo. The 302 that
11 I have -- I have all of the 302s of the Timothy
12 Martinez debrief. And then the other people I spoke
13 about are just on notes.

14 Q. Your bullet points. Do you have any sense,
15 was Urquizo, to your knowledge, ever a porter?

16 A. Well, I think as a cooperator he was, but
17 before that I don't know.

18 Q. Was he a cooperator at the time he had this
19 alleged conversation with Mr. Baca?

20 A. No.

21 Q. So my question for you was: Was he one of
22 these rare individuals that had the liberty to roam
23 the halls of Level 6 when this conversation took
24 place?

25 A. Doubtful.

1 Q. So it would be a rather simple task to
2 check the housing records to see if this conversation
3 was possible, wouldn't it?

4 A. I think so.

5 Q. So if the housing records reflect that
6 these two individuals lived in completely different
7 units in Level 6, do you think it was possible that
8 this conversation happened?

9 A. I think the only thing I would want to
10 check was, like, the rec schedule: Could they have
11 been on the yard at the same time? Because I'm not
12 exactly sure how that works. But I think I
13 understand what you're asking. I would want to
14 follow up and check that.

15 Q. Did you?

16 A. No.

17 Q. So you don't even know if this conversation
18 was possible?

19 A. I don't. I'm just simply reporting what
20 Urquizo's statement is.

21 Q. Right. And by the time you spoke to Mr.
22 Urquizo, the take-down of the SNM -- what the
23 Government refers to as the take-down of the SNM had
24 already transpired.

25 A. At least one or two phases, yes.

1 Q. Okay. So it's fair to say that it was
2 common knowledge within the inmates residing within
3 the Department of Corrections that you could exchange
4 information, in terms to dodge an indictment?

5 A. They might have thought that. We were up
6 there quite a bit.

7 Q. There was a good reason for them to think
8 that, wasn't there?

9 A. Probably.

10 Q. And that's because the FBI agents routinely
11 visited people, the unindicted people that resided in
12 Level 6 and Level 5?

13 A. Probably tried to talk to all of them.

14 Q. Right. And that was one of the common
15 conversation techniques, if you will, to tell the
16 folks: You can be with us or against us, your call?

17 MR. CASTELLANO: Objection, Your Honor.
18 Once again, I'd ask that it be focused on the
19 statements.

20 MR. LOWRY: Your Honor, I'm trying to get
21 to the context with which Mr. Urquizo made the
22 statement, because it goes to the credibility of the
23 statement.

24 THE COURT: Well, I guess I'm not quite
25 convinced that we're at the credibility stage.

1 MR. LOWRY: Here's where I'm really going
2 with this, Your Honor. The fact of the matter is, it
3 was physically impossible for this conversation to
4 have taken place based on housing records, and the
5 fact that the United States didn't even do its due
6 diligence to examine whether --

7 THE COURT: But even if that's the case,
8 what does that have to do with --

9 MR. LOWRY: Well, it goes into how -- the
10 United States wants to introduce these alleged
11 statements as co-conspirator statements that come in.
12 And if they never transpired, it seems to be like
13 fabrication, rather than a co-conspirator statement.

14 THE COURT: Well --

15 MR. CASTELLANO: That's the subject of
16 cross-examination at trial.

17 THE COURT: Yeah, I'm going to sustain the
18 objection. I think we're getting into the merits.

19 Q. Do you know when the conversation took
20 place?

21 A. Between Baca and Urquizo?

22 Q. Correct.

23 A. I couldn't give you a date when they were
24 both housed there. And I agree with you that that
25 wouldn't be difficult to narrow down.

1 Q. Could you give me a month?

2 A. No, I -- as you know, Mr. Baca was out of
3 state a lot, transferred a lot. I couldn't tell you.

4 Q. So I take it you would agree with me that
5 the conversation didn't happen when Mr. Baca was out
6 of the state?

7 A. I would agree with that.

8 Q. So in relation to the Molina, would you
9 agree with me the Molina homicide or the Molina event
10 happens on March 7, 2014?

11 A. Correct.

12 Q. So this conversation took place -- do you
13 have any sense -- a week before? Two weeks before?
14 A month before? A year before?

15 A. No, I think it's going to be the latter, as
16 opposed to the sooner. It's not going to be in close
17 proximity to March 7, 2014. It's going to be
18 sometime before. As I had explained earlier, this
19 was from my recollection the third time the hit order
20 had come down.

21 Q. Why wasn't the hit carried out, though, the
22 first two times it was ordered?

23 A. Well, I'm going to speculate, because
24 it's --

25 MR. CASTELLANO: Objection, Your Honor.

1 Doesn't relate to the statements.

2 THE COURT: Tie it to the James hearing.
3 How is this going to relate to what I've got to
4 determine? I think we're getting a little afield.

5 MR. LOWRY: I'll withdraw it, Your Honor.

6 Q. Well, let's move on to you said that Mr.
7 Urquizo talked to David Calbert?

8 A. Yes.

9 Q. Do you know when that conversation took
10 place?

11 A. That would be closer to the March of 2014.
12 Because Calbert was transferred from the Level 6 to
13 the Level 5, where Urquizo was at.

14 Q. And so, if I understand this right, did Mr.
15 Calbert tell you this? Because if I understood your
16 testimony correctly, you said Mr. Urquizo said that
17 Mr. Calbert had said --

18 A. Correct. So I was recalling or reading
19 from my notes, what Urquizo told me.

20 Q. What does Mr. Calbert say?

21 A. His statement was very, very similar to
22 Urquizo's. I think it matched on everything. But
23 they -- the most glaring difference I noticed had to
24 do with Varela's involvement.

25 Q. Okay. Explain to me the match points.

1 A. That there were two pages of paperwork. It
2 was an LCPD report. It looked kind of fishy, as they
3 described it; that Calbert took it to the south
4 facility, the Level 5; gave it to Urquizo, and then
5 Calbert believed that it went down -- of course he
6 remained behind.

7 Q. And where did the conversation between Mr.
8 Baca and Mr. Calbert take place?

9 A. Well, I'd be making an assumption there.

10 Q. Well, you had access to Mr. Martinez;
11 correct? Pardon me, Mr. Urquizo.

12 A. I had access to him, I debriefed him --

13 Q. Right.

14 A. -- Mr. Calbert. My interactions with Mr.
15 Calbert have been far less, because he was assigned
16 to other places when I came on board. So I'm not
17 sure -- I have talked to him, but I don't know if I
18 wrote his debrief.

19 Q. Would it be important for you to know when
20 the conversation took place?

21 A. Between Calbert and Mr. Baca?

22 Q. Correct.

23 A. It's an important timeframe.

24 Q. Was it before January of 2014?

25 A. I couldn't tell you, sir.

1 Q. Was it in January of 2014?

2 A. Mr. Lowry, I don't mean this
3 disrespectfully. You keep asking, but I honestly
4 don't know.

5 Q. You don't have any idea. So if I
6 understand your testimony correctly you don't know
7 where, and you don't know when?

8 A. Well, I presume it happened at the Level 6,
9 because Calbert went from the 6 to the 5. But that's
10 what I was told by Urquizo.

11 Q. And again, Calbert wasn't the type of rare
12 individual that would have an all-access pass to roam
13 Level 6?

14 A. No, I don't think so.

15 Q. Did Mr. Baca enjoy those kinds of
16 privileges when he was at Level 6?

17 A. Very doubtful.

18 Q. Why were the other -- why was -- what did
19 they tell you -- well, they said -- why the paperwork
20 was necessary for the Molina hit. Where did this
21 requirement come from, the one you described in your
22 direct, that sort of the rules -- and I don't know
23 how to describe it -- changed, evolved, morphed?

24 A. Well, to answer that I'd be combining what
25 dozens of SNM members have told me. I mean, I have

1 an opinion, if that's what you want to hear.

2 Q. Well, I want to know what your
3 understanding of the rules were, how they changed,
4 why the paperwork was necessary?

5 A. There were political hits over the years
6 that there wasn't paperwork. And again, it wasn't a
7 snitch, and then it was later found out that it was a
8 bad hit or he wasn't a snitch. It was a hit over
9 someone not sharing dope, or over a female.

10 And that was against the rules of old. But
11 the rules have changed over time.

12 Q. So that would be unauthorized, if you will?

13 A. Well, the guys that called it wouldn't say
14 it's unauthorized. But the general opinion is, yeah,
15 they -- the SNM needed to get control over what were
16 the rules, and what's the understanding of what the
17 rules are? There has to be paperwork.

18 Q. Okay. So -- and this is where I want to
19 drill down on this, because these are supposedly
20 co-conspirator statements. So who was in charge of
21 making the rules for this endeavor?

22 A. Well, my understanding is that when Baca is
23 in New Mexico, when he's not out of state -- it's not
24 disputed -- that he sets the rules -- and in his
25 absence, there is a top-down mesa or a table, or a

1 panel of leaders. And that's even disputed because
2 of politics in different facilities.

3 Q. So if Mr. Baca makes the rules, why is he
4 in Level 6?

5 MR. CASTELLANO: Objection, Your Honor.
6 This is not relating to the statements.

7 MR. LOWRY: Your Honor, actually it is.
8 Because what they're trying to allege -- and we've
9 gone through this throughout the entirety of this
10 case -- but they're trying to allege a single
11 overarching conspiracy.

12 THE COURT: Well, I'll allow this question.
13 Overruled.

14 Q. So if Mr. Baca is the -- I believe you
15 said: When he's in New Mexico, he's the guy?

16 A. Correct.

17 Q. Then why was he a Level 6 and not Southern?

18 A. Well, Level 6 is where Department of
19 Corrections, being the leader of the S -- I think
20 over the years he's been at a lot of facilities. But
21 at that time that's where the Department of
22 Corrections wanted to keep an eye on him as a leader.

23 A lot of the leaders of the various prison
24 gangs are housed at the Level 6.

25 Q. But if I understand the disclosures in this

1 case, he was in Level 6 because other people in
2 Southern had him sent there?

3 A. Kited him out, I think they called it.

4 Q. Would that be fair to say?

5 A. I've heard that, too. I've not seen those
6 statements. Or I haven't talked to any SNM members
7 who said I'm the one that kited "Pup" out. So I
8 understand how that concept works. But I'm not sure
9 I can answer that. I don't know what they were doing
10 back then.

11 Q. But your colleague, Lance Roundy, was one
12 of the individuals that actually was instrumental in
13 passing along the message to the Department of
14 corrections that Mr. Baca needed to be taken from
15 Southern to Level 6 for his own safety?

16 A. That may have happened. I wasn't part of
17 the case when Roundy was working it. I was working
18 other stuff in another place.

19 Q. And you haven't studied his 302s as part of
20 your investigation in this case?

21 A. I've read them. I wouldn't say I studied
22 them. But I have read them, and I know he worked
23 closely with Corrections.

24 THE COURT: Mr. Lowry, would this be a good
25 time for us to take our afternoon break?

1 MR. LOWRY: Your Honor, may I review the
2 notes during the break?

3 THE COURT: You can review the notes during
4 the break.

5 MR. LOWRY: I won't make a copy.

6 THE COURT: All right. We'll be in recess
7 about 15 minutes.

8 (The Court stood in recess.)

9 (Ms. Sirignano entered the courtroom.)

10 THE COURT: All right. Ms. Sirignano, you
11 rose from the grave, and you're with us now?

12 MS. SIRIGNANO: Yes, Your Honor.

13 THE COURT: Are you feeling better?

14 MS. SIRIGNANO: Yes.

15 THE COURT: All right. Mr. Mondragon, I
16 was told you came in. All right. You're here as
17 well. You want to enter your appearance?

18 MR. MONDRAGON: Yes, Your Honor.

19 THE COURT: All right. Okay. Any others?

20 All right. Mr. Acee, I'll remind you
21 you're still under oath.

22 Mr. Lowry, if you wish to continue your
23 cross-examination of Mr. Acee, you may do so at this
24 time.

25 MR. LOWRY: I do, Your Honor. Thank you

1 very much.

2 THE COURT: Mr. Lowry.

3 BY MR. LOWRY:

4 Q. Special Agent Acee, how are you doing?

5 Special Agent, you testified on direct
6 that -- I believe I have this right -- that Mr.
7 Urquizo, if I understood you correctly, once the
8 assault on Mr. Molina takes place, Mr. Urquizo
9 explained to you that he heard Daniel Sanchez say
10 something to the effect of "Fuck, yeah"?

11 A. Yes.

12 Q. Now, I just want to make sure I understand
13 this right. Mr. Sanchez is in the blue pod?

14 A. Correct.

15 Q. And Mr. Urquizo was in the yellow pod?

16 A. Yes.

17 Q. And Mr. Urquizo, because he's a new arrival
18 in the yellow pod, is locked into his room?

19 A. He was when he first arrived. At the time
20 of the hit, he was or was not, I'm not sure. I think
21 he's locked in his room, though, in yellow pod.

22 Q. And Mr. Urquizo's claim is that he's locked
23 in his room; as the doors open between the two pods
24 he hears this?

25 A. No, he said he just heard it. And I

1 said -- I asked, "How did you know it was 'Dan Dan'?"

2 Q. And what did he say?

3 A. "I just know his voice, he has a unique
4 voice." Made fun of him for being a farmer in his
5 former life or something.

6 Q. So does he know what he's saying, "Fuck,
7 yeah" about?

8 A. Molina getting hit was his impression.

9 Q. How do you know that was his impression?

10 A. That's what we talked about. I said,
11 "Well, how do you know what was going on? What could
12 you hear from yellow pod? How did you know when it
13 went down?"

14 He said it was loud and he heard a lot of
15 commotion, and specifically heard "Dan Dan" say that.

16 And I had the same question, "Like, how do
17 you know it was him?"

18 Q. Now, with regard to -- I want to move on
19 from the Molina situation to talk about the Julian
20 Romero assault. And I believe you testified on
21 direct that -- was this still Mr. Urquizo? What did
22 Mr. Urquizo tell you about Mr. Baca and the Julian
23 Romero?

24 A. That Mr. Baca did not want Romero killed.
25 You know, he'd made a mistake regarding the whole

1 "Styx" thing, and the wife there. But he'd been
2 around a long time and that he should just be beat up
3 or stabbed, but not killed.

4 Q. Okay. Now, did Mr. Urquizo hear Mr. Baca
5 say this?

6 A. I don't think so. He related that that
7 came down when Jonathan Gomez, "Baby G," came down,
8 who I referred to as a protege of Mr. Baca's.

9 Q. Did you speak to Mr. Gomez?

10 A. I have spoken with him.

11 Q. And what did he relate to you about what
12 Mr. Baca allegedly said?

13 A. He didn't comment on that.

14 Q. Did you ask Mr. Gomez about that?

15 A. Yes.

16 Q. So he didn't confirm what Mr. Urquizo had
17 told you?

18 A. Not exactly.

19 Q. What do you mean "not exactly"?

20 A. He danced around for a long time. But no,
21 he didn't -- to answer your question, he didn't.

22 Q. Did he get the award for Dancing With the
23 Stars?

24 A. He was one of the better -- yeah, ones to
25 avoid answering questions about Mr. Baca.

1 Q. Did he answer the questions at all?

2 A. In a roundabout way, yes.

3 Q. Describe for me what you mean by "a
4 roundabout way."

5 A. Sure. It was -- what we were talking about
6 was why the hits hadn't happened. The Molina hits
7 hadn't previously happened because "Baby G" or
8 Jonathan Gomez was in Southern at the time. And I
9 had been hearing from different SNM members that the
10 order had gone down when "Big Jake," Manuel Jacob
11 Armijo was there, "Baby G," some of the Clarks. And
12 that because Molina was from Las Cruces the hit
13 didn't take place. So I was trying to question
14 Jonathan about that. "Is that true? What do you
15 think of all that?"

16 And he said there were times that orders
17 came down from the top. He didn't say Baca
18 specifically, but orders came down from the top, and
19 basically, if he didn't agree with those orders, it
20 didn't happen. And that was sort of his offer to me
21 to say, "See, we don't always follow the orders."

22 So that's what I'm recalling regarding Mr.
23 Baca and the Molina hit and Jonathan Gomez and our
24 conversation.

25 Q. Now, if I understand you correctly,

1 Mr. Gomez says that, "We don't follow Mr. Baca's
2 orders"?

3 A. Not exactly. He just wanted to make it
4 clear that he might receive an order, but he was his
5 own man, and would process it, and think and consider
6 what was best for all the guys in the pod and all the
7 guys in the facility. Because there was a rift
8 between people living in the north Santa Fe, and the
9 guys in Cruces; that the guys in the north wanted --
10 they didn't think the guys in Las Cruces had it as
11 bad as them. So they'd send these orders down to hit
12 people, and then the guys down south wouldn't do it.

13 Q. Now, there was a period of time in 2013,
14 where Mr. Baca lived with -- at Southern, with Mr.
15 Molina; correct?

16 A. I believe so. I don't know how close, in
17 what proximity. But I believe so.

18 Q. Would you -- if I told you that they both
19 lived in blue pod together for a period of time at
20 Southern, would you have reason to doubt that?

21 MR. CASTELLANO: Objection, Your Honor.
22 Straying away from the statements again.

23 MR. LOWRY: Your Honor, no, this gets right
24 back to the conspiracy.

25 THE COURT: Well, I'm going to allow this

1 testimony. Overruled.

2 A. If you told me that, I believe you.

3 Q. I believe you said earlier that when Mr.
4 Baca was in New Mexico, his word ruled what you claim
5 to be the SNM?

6 A. In the latter years, yeah. Certainly not
7 when he was a young man, but in the latter years,
8 yes.

9 Q. Was 2013 one of the latter years?

10 A. Yes.

11 Q. So if Mr. Baca wanted Mr. Molina dead in
12 2013, and they lived in the same pod, why wasn't Mr.
13 Molina killed?

14 MR. CASTELLANO: Objection, calls for
15 speculation.

16 THE COURT: Well, would you just be
17 speculating?

18 THE WITNESS: Yes, sir.

19 THE COURT: Sustained.

20 Q. I want to bring your attention to some
21 statements that you said that Tim Martinez overheard
22 Mr. Baca say. And I believe -- and you kind of
23 pointed that out to me in your 302. I'm happy to
24 return this to you, if you'd like.

25 MR. LOWRY: May I approach the witness,

1 Your Honor?

2 THE COURT: You may.

3 MR. LOWRY: May I ask him a question first?

4 Q. According to your 302 -- and I'm looking at
5 this, and it's page 2 of 7 on a 302, dated January
6 26, 2017. You've written in your 302 that Baca told
7 Martinez, quote, "If they would have let me out,
8 Javier wouldn't be dead. That man would still be
9 alive. But they didn't, and what's done is done.
10 When they wouldn't let me out, we had to make a
11 statement. They called my bluff. And now they have
12 a dead man on their hands." What did he mean by
13 "they called my bluff"?

14 A. Well, I believe that had to do with Mr.
15 Baca's communications or requests to the Department
16 of Corrections referred to as the Jerry Roarke
17 letter. I believe that's what it's in reference to.

18 Q. But what was the bluff?

19 A. I'm speculating: That if they would
20 have -- if the Department of Corrections would have
21 followed Mr. Baca's recommendation or idea, that this
22 wouldn't have happened, the Molina homicide wouldn't
23 have happened.

24 Q. But when Mr. Baca lived with Mr. Molina in
25 Southern, Mr. Molina was alive; correct?

1 A. He was.

2 Q. And why do you think that this is a
3 statement meaning that Mr. Baca wanted Molina dead?

4 A. Like why did I record that? Why did I
5 think that was --

6 Q. No, why did you think this is a statement
7 concerning a conspiracy to kill Mr. Molina?

8 A. Well, he's -- Mr. Baca is relating to
9 another SNM member that -- again, and part of this is
10 what I'm surmising -- if they'd listen to me, is what
11 he says, this wouldn't have happened. This was an
12 SNM hit, and he's a known leader of the SNM. So, to
13 me, this is an important statement regarding that
14 homicide.

15 Q. But if I understood your testimony on
16 direct -- correct me if I'm wrong -- you said after a
17 homicide takes place all kinds of people take credit?

18 A. Did I say that today?

19 Q. Something along those lines.

20 A. I've seen that in this case where -- I'm
21 trying to think of a specific example. But I have
22 seen within the SNM where -- yes, I can think of it
23 now -- members have claimed, when talking to other
24 members, that they've participated in a crime that
25 they didn't. I have seen that. I don't know that I

1 talked about that today, but --

2 Q. Okay. So you wouldn't -- again, I just
3 want to make sure I understand your testimony
4 correctly. But if I understand what you're saying
5 now, you wouldn't disagree with me that people lay
6 claim to things they didn't do?

7 A. Sure.

8 Q. And there may be all kinds of motivations
9 for making those kinds of claims?

10 A. Yes.

11 Q. And one of them might be for
12 self-preservation?

13 A. Certainly.

14 Q. So this particular quote was much after the
15 fact?

16 A. Yes, a couple of years.

17 Q. And you understand that when Mr. Baca was
18 residing with Mr. Molina in Southern, Mr. Molina was
19 safe and sound?

20 A. Yes. In fact, I think there is even some
21 pictures in discovery of them posing together, yeah?

22 MR. LOWRY: May I have a moment, Your
23 Honor?

24 THE COURT: You may.

25 Q. And quickly, Agent Acee, do you know where

1 Mr. Baca allegedly made this statement to Mr.
2 Martinez?

3 A. Yes, while they were housed together at the
4 Level 6.

5 Q. And when was that?

6 A. Shortly before the take-down, when we
7 brought Mr. Baca back.

8 Q. And where was Mr. Martinez' -- where was
9 his cell in relation to Mr. Baca's cell?

10 A. I couldn't tell you.

11 Q. At the time the statement was made, Eric
12 Duran was residing right next to Mr. Baca?

13 A. It would have been around that timeframe,
14 yes. It took us a while to arrange movements and
15 stuff, but it would have been that general timeframe.

16 Q. And that's my point, is if not you, someone
17 in the FBI, the Department of Justice arranged --
18 orchestrated this living arrangement where Mr. Baca
19 would live right beside Mr. Duran?

20 A. Yes. We asked them at the Department of
21 Corrections -- they're a partner -- ultimately, it's
22 their move, but yes, we asked for it.

23 Q. And they obliged you --

24 A. Yes.

25 Q. -- in all of your requests?

1 A. Not all of them.

2 Q. But -- well, they obliged you in putting a
3 cellphone and a recording device in the room with
4 Mr. Duran?

5 A. Yes.

6 Q. So why didn't Mr. Duran capture those
7 statements on the recording devices if they were
8 made?

9 A. I don't know. I surmise that Mr. Baca is
10 conversing -- I know for a fact he's conversing with
11 Mr. Duran through the ventilation pipes under the
12 bed.

13 Q. Right.

14 A. I don't know if the conversation with
15 Martinez is in the yard, if it's passing within the
16 pod for showers or meals. Or I know some inmates are
17 able to talk through the opposite vent on the other
18 side of the wall, or through sometimes ventilation or
19 pipes that lead down between the tiers.

20 Q. Is there documentation of the time inmates
21 would have spent together in the yard, rec yard?

22 A. That's a question for Corrections. I'm not
23 sure. I know it's not much for a Level 6 inmate,
24 maybe an hour. And I don't think they have to go, if
25 they don't want to. But that's a question for them.

1 MR. LOWRY: No further questions, Your
2 Honor.

3 THE COURT: All right. Thank you, Mr.
4 Lowry.

5 Ms. Jacks, do you have cross-examination?

6 MS. JACKS: Yes, Your Honor. Thank you.

7 EXAMINATION

8 BY MS. JACKS:

9 Q. Good afternoon, Agent Acee.

10 A. Good afternoon.

11 Q. I'm going to try to approach this in a
12 logical fashion. We'll see how long that lasts.

13 Let's start with your interviews with Lupe
14 Urquizo. You testified about a bunch of statements
15 he made to you. Do you recall that testimony?

16 A. Yes.

17 Q. Just, in general, were all those statements
18 made during the same interview with him or different
19 interviews?

20 A. Different.

21 Q. Okay. How many total interviews have you
22 had with Mr. Urquizo?

23 A. At least three.

24 Q. And in that three, does that include the
25 one where you mention that you spoke to him before he

1 had an attorney and before he was even a suspect in
2 the case?

3 A. Yes, that would have been my first one, up
4 at PNM.

5 Q. And do you recall the date or the month and
6 year of that interview?

7 A. No. It would be the first sentence of the
8 my 302. But no.

9 Q. Well, the information that you related here
10 today, is that information he told you in that first
11 interview before he became a potential suspect in
12 this case?

13 A. That's a summary of all of the debriefs
14 with him. So if I did three, it would be a summary
15 of all three.

16 Q. I guess my question was -- did he talk to
17 you freely in that first interview?

18 A. Yes.

19 Q. And he told you things about the murder or
20 the homicide of Javier Molina?

21 A. Yes and no. I mean, he was worried, and
22 that's why we got him an attorney. I mean, he
23 started down that road, and he started to tell me
24 stuff. And then we wanted him to cooperate, and we
25 made the decision that we should get him an attorney.

1 Q. So you facilitated him getting counsel, and
2 then the next meeting was actually with his counsel
3 present?

4 A. Yes.

5 Q. And then the third meeting was with his
6 counsel present?

7 A. Any subsequent ones after would have been
8 with his counsel.

9 Q. Okay. And is it fair to say that all of
10 your contacts with Mr. Urquizo occurred after the
11 initial take-down in this case in December of 2015?

12 A. Definitely. I didn't even know who he was
13 until his name was mentioned here in court.

14 Q. And it sounds like when you talked with him
15 the first time, he became concerned, noticeably
16 concerned, about some sort of liability he might
17 have?

18 A. He did to a lesser extent than I did. I
19 definitely did.

20 Q. Okay. So you viewed him as a potential
21 suspect, but he initially maybe didn't?

22 A. I think I could have let him keep talking
23 but that would have hurt the relationship later.

24 Q. I want to talk, though, specifically about
25 the first statement that you told us about, which was

1 Mr. Urquizo claimed during one of your interviews
2 that Mr. Baca had told him that he wanted Javier
3 Molina hit?

4 A. Yes.

5 Q. It was in the first interview, second
6 interview, or third?

7 A. I think we didn't get into details until
8 the second, at least the second interview.

9 Q. So I guess I should be more specific. Did
10 he tell you that Baca wanted Javier Molina hit in the
11 first interview? Did he mention that at all?

12 A. I'd have to refer to my 302.

13 Q. Do you have it?

14 A. No.

15 Q. But your recollection is that he did tell
16 you something to that effect in the second interview.

17 A. What my recollection was I spoke to
18 Urquizo, and he told me that. Whether it was in the
19 first, second, or interview -- I don't think it would
20 be in the third; it would be the first or second.

21 Q. Okay. You're the case agent for this case,
22 right?

23 A. I am.

24 Q. You're an FBI agent?

25 A. I am.

1 Q. For how many years?

2 A. A little over nine.

3 Q. I would assume that you've been in
4 situations where people make false statements to you?

5 A. Yes.

6 Q. Or people lie to you?

7 A. Yes.

8 Q. Or people tell you what they want to hear,
9 because they want to ingratiate themselves to you in
10 some way?

11 MR. CASTELLANO: Objection, relevance.

12 THE COURT: Overruled.

13 A. I'm sure they do.

14 Q. Because people want to avoid going to jail,
15 right?

16 A. Generally, yes.

17 Q. And so part of your job as the investigator
18 is to make inquiries about what people tell you, to
19 try to verify those things, right?

20 A. Yes.

21 Q. Because if you're going to take action
22 based on something, you'd want it to be reliable?

23 A. True.

24 Q. You'd want it to be credible?

25 A. Yes.

1 Q. Did you record any of your meetings with
2 Mr. Urquizo?

3 A. Certainly not after he had an attorney, and
4 I don't think I recorded the first one.

5 Q. But that's something you could check on?

6 A. Yes.

7 Q. So it's possible that you recorded it?

8 A. Possible. I record a lot of my interviews.

9 Q. When you spoke with Mr. Urquizo about his
10 claim that Baca wanted Javier Molina hit, did you ask
11 him: Was this is a face-to-face conversation with
12 Mr. Baca?

13 A. Yes, because I asked him where: "Like,
14 where were you?"

15 Q. And what did he say?

16 A. I believe he said they were at the North,
17 Level 6.

18 Q. That he was at PNM Level 6, and that Mr.
19 Baca was at PNM Level 6?

20 A. Yes.

21 Q. And that they were both -- PNM Level 6 is
22 divided into various units, isn't it?

23 A. It is.

24 Q. So it wouldn't be -- like, a person from
25 one unit couldn't talk to a person from the other

1 unit, could they?

2 A. We've arranged that to happen, and I think
3 it naturally can happen, but it's not a daily
4 occurrence.

5 Q. Did you ask Mr. Urquizo where he was when
6 Mr. Baca supposedly made this statement?

7 A. Not beyond they were incarcerated together
8 at the Level 6 -- or it may have been the Level 5. I
9 don't recall.

10 Q. Well, you said Level 6 before, now you
11 can't recall if it's Level 5 or Level 6?

12 A. Yeah. I'd want to look at my 302 to tell
13 you specifically but I'll say that it was at PNM.

14 Q. Okay. So now you're just saying it was at
15 a prison, the Penitentiary of New Mexico, at any one
16 of their facilities?

17 A. No, I'm saying it was either at the Level 5
18 or the Level 6. And if I had my 302, I might be able
19 to be more specific.

20 Q. But you don't have it?

21 A. I don't.

22 Q. Did you ask Mr. Urquizo how it was that he
23 came to speak with Mr. Baca? Was it as he was
24 passing his cell? Was it through the vents in the
25 cell?

1 A. No.

2 Q. You didn't ask him?

3 A. No.

4 Q. Did you ask him who was present -- if any
5 other inmates were present at the same time?

6 A. No.

7 Q. And did you ask him what year this was?

8 A. I would have asked, you know, generally
9 when did this take place.

10 Q. What did he say?

11 A. I don't remember.

12 Q. Well, was it in 2014?

13 A. I think it would have been. I'm only
14 hesitating because the homicide was in March. That's
15 early in the year. And I know that movements and
16 transfers take a while. So it could have been in
17 late 2013.

18 Q. I'm not asking you to speculate. I'm
19 asking what Mr. Urquizo told you.

20 When did Mr. Urquizo say that Baca told him
21 he wanted Javier Molina dead?

22 A. If you are asking for a specific date, I
23 don't have it.

24 Q. Okay. You were the investigator on the
25 case, right?

1 A. I was. Not in 2014, but I am now.

2 Q. Did you ask Mr. Urquizo: "When did you
3 have this conversation with Mr. Baca?"

4 MR. CASTELLANO: Objection, asked and
5 answered.

6 A. Yes.

7 MS. JACKS: I don't think it's been
8 answered.

9 THE COURT: Overruled.

10 A. Yes, I asked.

11 Q. What did he say?

12 THE COURT: Direct comments to the Court,
13 not to opposing counsel.

14 A. Yes, I tried to flesh that out. What I
15 don't have in front of me is my 302 with those
16 details.

17 Q. Maybe we'll come back to this tomorrow.
18 But I guess, do you have any -- did Mr. Urquizo give
19 you a date, a general date, when this conversation
20 supposedly happened?

21 A. I kept pressing him for a timeline. The
22 problem is, as I sit here right now, I don't know
23 what that timeline is.

24 Q. Okay. Did he ever give you a timeline?

25 A. To the best of his abilities, he did.

1 Q. Okay. And you said you had to press him.
2 You had to repeatedly question him about that?

3 A. Not that he was uncooperative. The problem
4 is these guys don't have calendars or a way to know
5 what day it is. So they go with what pod they were,
6 what color it was, and what room. So I don't have
7 access to that information. So I kept pushing him
8 for, Well, what was the weather like? What color pod
9 was it? And so that's typically how I got the
10 timelines from guys that have been incarcerated, like
11 Mr. Urquizo, for so long.

12 Q. Is it fair so say that if he gave you a
13 timeline it should be in your 302s?

14 A. Yes.

15 Q. And that you would be able to reference
16 that and give us the timeline, if it exists?

17 A. Yes.

18 Q. I may have lost the answer to this in that
19 last exchange. You didn't ask him or you didn't get
20 information from him exactly how the conversation
21 occurred, whether it was between cells, through a
22 door, in the rec cage, on some sort of transport?

23 A. No. Those are the questions that I would
24 ask. But again, as I sit here, I don't know how to
25 answer that without looking at my report.

1 Q. Okay. And if he gave you an answer, it
2 should be reflected in your 302?

3 A. It should be.

4 Q. Now, assuming that Mr. Urquizo gave you
5 some sort of timeline about when this alleged
6 conversation took place, what efforts did you make to
7 verify that Urquizo was in a place where he could
8 have actually had the conversations?

9 A. So all of these interviews are -- it's
10 myself and one or more STIU officers. So I'll
11 typically conduct the interview, and then I'll look
12 to one of the STIU guys. They'll also be taking
13 notes, or in some cases they're in a location where
14 they can check on a computer and give me like a yeah
15 or a no, and can I press on with that interview.
16 That's typically how we do these debriefs. So I,
17 myself, don't have that access. I have to rely on
18 the Department of Corrections.

19 Q. So who was the STIU person that was present
20 during your interviews of Lupe Urquizo?

21 MR. CASTELLANO: Objection, Your Honor.
22 We're straying away from the statements again.

23 THE COURT: Tie this to the James hearing.

24 MS. JACKS: I think one of the issues is
25 whether the statement was actually made. And so I

1 think what I'm trying to get to is what corroboration
2 there is that the inmates even had access to speak
3 with each other.

4 THE COURT: I'm going to sustain. I still
5 think the credibility issues are getting a little far
6 afield.

7 Q. You're saying, as an FBI agent, when Mr.
8 Urquizo told you, "I was with Baca during this time
9 period," the way you would investigate that is look
10 over to somebody else who was conducting the
11 interview with you and wait for them to nod yes or
12 no?

13 MR. CASTELLANO: Objection.

14 THE COURT: Sustained.

15 Q. Did you make any other effort besides
16 looking to a correctional officer to verify the
17 information Mr. Urquizo gave you about his location?

18 MR. CASTELLANO: Objection.

19 THE COURT: Sustained.

20 Q. All right. I want to move on.

21 I think the next thing you said was Mr.
22 Urquizo told you that David Calbert brought the
23 paperwork to him, Mr. Urquizo, at PNM Level 5?

24 A. Yes.

25 Q. And is that accurate? Did I make that

1 statement correctly?

2 A. I think you did.

3 Q. Okay. Did you ask Mr. Urquizo when that
4 supposedly happened?

5 A. Yes.

6 Q. And what did he say?

7 A. Again, that timeline that I referred to
8 earlier would be in my 302, if he described how that
9 happened. As I sit here today, I don't remember all
10 the details of that.

11 Q. Okay. My question was when? My next
12 question was going to be how. But my question then
13 was when, so your answer is "I don't know"?

14 A. My answer is I'd need to look at my 302
15 where I recorded all that.

16 Q. And if he provided you an answer to when,
17 that would be in your 302?

18 A. Yes.

19 Q. And how did he -- did Mr. Urquizo say that
20 Calbert brought this paperwork?

21 A. Calbert was transferred from the Level 6 to
22 the Level 5, so he brought it with him.

23 Q. And how did he bring it with him, according
24 to Mr. Urquizo?

25 A. I don't know.

1 Q. You'll agree with me that police reports
2 regarding other inmates is contraband within the
3 Department of Corrections?

4 A. No, I don't agree with that.

5 Q. Oh, you don't?

6 A. No.

7 Q. So you think that police report -- I guess,
8 let me go back. For Mr. Calbert to bring some
9 paperwork from PNM Level 6 to Level 5, would his
10 property have to be searched?

11 A. No, not that intently. I found my
12 affidavits in SNM pods in Level 6.

13 Q. So you're talking from personal experience?

14 A. Yes.

15 Q. Okay. Did Mr. Urquizo tell you whether Mr.
16 Calbert had to engage in any sort of special
17 surreptitious paperwork to get their paperwork over
18 from PNM Level 5?

19 A. No. And I don't believe I asked that
20 question.

21 Q. Did Mr. Urquizo tell you how Mr. Calbert
22 supposedly gave them the paperwork?

23 A. No, not beyond: He just gave me the
24 paperwork.

25 Q. So like they met in the hallway of the

1 prison and exchanged paperwork?

2 A. Yeah. They're in the same pod. They can
3 stand around and dance if they want.

4 Q. Is that how Mr. Urquizo said he got it?

5 A. He said he got it from Calbert when he
6 arrived.

7 Q. When Mr. Calbert arrived?

8 A. Correct.

9 Q. And how much before that or how long after
10 that was Mr. Urquizo transferred, if he told you?

11 A. I think he said he had it -- Urquizo said
12 he had it for two weeks, is my recollection.

13 Q. Did Mr. Urquizo tell you that he made any
14 sort of effort to hide it or obscure it in some
15 manner?

16 A. Yes. He put it amongst his legal
17 paperwork, which was nothing more than a folder, or a
18 manila envelope, with police reports stemming from
19 his conviction.

20 Q. So Mr. Urquizo -- is this the first
21 interview, second interview, or third interview that
22 he told you these details?

23 A. Mr. Urquizo gives us a synopsis. He kept
24 saying, "I know what you're looking for. I know what
25 you want." He referenced a conversation that he'd

1 had with you at the prison. And that's when he just
2 kind of started sweating and getting nervous. And
3 that's when I made the -- not a singular decision, it
4 was with consultation with the U.S. Attorney's
5 Office, but that we should get him a target letter
6 and get him an attorney, and then do a thorough
7 debrief. So he gave me just a snippet.

8 Q. In the first interview. But it sounds like
9 most of your information came from the second or
10 third interview?

11 A. That's fair, yes.

12 Q. And he told you that he made an effort to
13 hide this supposed paperwork by putting it in with
14 his legal materials?

15 A. Yes.

16 Q. And then I'm assuming -- well, I don't want
17 to assume -- did he tell you that he transported his
18 legal materials when he was moved?

19 A. Well, he didn't transport it on his person.
20 He caused it to be transferred. You know, because
21 he's locked down, he's shackled like the defendants
22 are today. But it was in his box, if you will, of
23 property.

24 Q. In his property?

25 A. Yes.

1 Q. So when Mr. Urquizo was moved from PNM to
2 Southern New Mexico Correctional Facility, he went in
3 a van, and he had some property that was towed behind
4 him?

5 A. Something like that, yes.

6 Q. And he told you that he brought it in his
7 legal work?

8 A. Yes.

9 Q. Now, are you aware that when inmates are
10 transferred from one prison to another, their
11 property is inventoried?

12 A. It is.

13 Q. Well, are there New Mexico Department of
14 Corrections regulations requiring that an inmate's
15 property be inventoried at the institution that's
16 sending him and at the institution that's receiving
17 him?

18 A. I'm not familiar with their policies that
19 closely. But that sounds -- that seems reasonable,
20 and I'm sure something like that exists.

21 Q. Okay. And did you make any efforts to look
22 into those policies as they applied to Mr. Urquizo's
23 supposed transportation of legal materials to
24 Southern in the days before the Molina homicide?

25 A. No.

1 Q. So you don't know if there are property
2 inventories that exist that show that Mr. Urquizo
3 transmitted legal paperwork with him; that Mr.
4 Urquizo transferred legal paperwork along with
5 himself, when he came down to Southern?

6 A. There could be, but I'm doubtful.

7 Q. Why are you doubtful?

8 A. Well, I mean, the same correctional
9 officers -- no offense to them, there are some even
10 in this courtroom -- those are also the same ones
11 we're arresting for bringing in contraband. So if
12 I'm going to sit here and say, Yeah, everybody does
13 their job perfectly, and there is a perfect
14 inventory, most of the COs, in my experience, are
15 scared to look at anything that says "legal mail."
16 That's how they get most of their dope in.

17 Q. Well, did you make any effort to find out
18 what the property inventories for Mr. Urquizo showed?

19 MR. CASTELLANO: Objection, Your Honor.

20 THE COURT: Tie it -- tell me where -- how
21 this goes to the James stuff. It looks like it's
22 more credibility issues. Do you still want to pursue
23 it?

24 MS. JACKS: I do. I think I already know
25 the Court's ruling. I think one of the issues is

1 whether the statements were actually made.

2 THE COURT: All right. Sustained.

3 Q. Now, when Mr. Lowry was talking to you
4 about this issue, I think you brought up -- I didn't
5 really understand this, but I think you brought up
6 that there was some difference or there was some
7 inconsistency between what Urquizo said and what Mr.
8 Calbert said involving Mauricio Varela.

9 A. Yes.

10 Q. Regarding this alleged transfer of
11 paperwork?

12 A. Yes.

13 Q. What was that?

14 A. Well, Urquizo spoke -- or implicated Varela
15 more significantly. I think part of that was because
16 he was on a transport with him, and he ended up in
17 Southern with him, where Calbert didn't travel with
18 him. So he had more time with him. And they had
19 different opinions on how involved Varela was and how
20 influential he would be in pushing for Molina to get
21 hit.

22 Q. Did Urquizo ever tell you that Varela
23 carried the paperwork?

24 A. No.

25 Q. Okay. And did Calbert ever tell you that

1 Varela -- that he gave the paperwork to Varela?

2 A. No, they matched to a tee there, that it
3 went to Urquizo.

4 Q. I want to move forward to after Mr. Urquizo
5 is transferred to Southern New Mexico Correctional
6 Facility. And I think you testified earlier that
7 when an inmate is first transferred they're placed
8 in, quote, "orientation"?

9 A. That's my understanding.

10 Q. And orientation, basically, means that
11 you're locked in your cell?

12 A. I think so. But I'm not an expert on that.
13 I've never witnessed that take place. Like, I have
14 no firsthand knowledge of that. But that's my
15 understanding.

16 Q. Okay. Well, you used the word
17 "orientation," so is that what you meant, that he was
18 somehow locked in his cell and isolated from having
19 interactions with other inmates?

20 A. Orientation -- I got that term from
21 Department of Corrections personnel, that a person
22 would be in orientation for two days when they first
23 arrive.

24 Q. Did you ask the Department of Corrections
25 personnel that told you that what that meant?

1 A. Yes.

2 Q. And what did he or she say?

3 A. When inmates are transferred -- and I don't
4 know -- I'm hesitating, because I don't know if it
5 only applies to STGs or prison gangs, or all inmates,
6 but that, in this case, SNM members, when they were
7 moved from facilities, there was a two-day
8 orientation. Their property arrived sometime later.
9 And I'm not sure. It sounded like there was some
10 kind of checklist that a person going through
11 orientation had to go through. Maybe medical and
12 other stuff. And again, it's not my area of
13 expertise.

14 Q. Well, you referenced that Mr. Urquizo told
15 you that during this period of orientation he was
16 able to pass notes on a window with Mario Rodriguez
17 and Timothy Martinez?

18 A. I want to clarify. He said that he held
19 notes up, as opposed to passing. He held it up to a
20 window.

21 Q. And was it a window from his cell into the
22 pod, or some other window?

23 A. No, I believe it's his -- it's a window
24 affixed to his door that's viewable from people
25 passing the pod, like on the first level outside the

1 pod.

2 Q. The common areas of the unit?

3 A. The part of the common area of the unit.

4 But in this case you have guys that live in another
5 pod that are passing in the hallway, where there is a
6 door and a window as well.

7 Q. Okay. Well, did you ask Mr. Urquizo what
8 window he supposedly held some note up to?

9 A. Yes, and he told me, you know, blue pod 1A
10 12, which means nothing to me. But he made those --
11 he, as best he could, identified what rooms, like all
12 these guys do when they recount where they've been.

13 Q. And did you put that information in your
14 notes?

15 A. I believe I did.

16 Q. And is that reflected in your 302?

17 A. I think so.

18 Q. Was it your -- I mean, you're sitting here
19 talking to him, interviewing, you need to have an
20 understanding of what he's saying, right?

21 A. Well, I can understand what he's saying
22 without having the exact layout of the facility.
23 That wasn't an area I was familiar with.

24 Q. Was it your understanding when you spoke
25 with him that these notes he was talking about, he

1 held up to a window that was on the door of his cell?

2 A. Yes.

3 Q. And do you know whether from the door of
4 his cell he can see into another pod?

5 A. I don't think he can. And I'm going off my
6 walking around the facilities.

7 Q. And from the door of his cell -- is the
8 door of his cell -- the window in the door of his
9 cell visible to another pod?

10 A. I don't think so. I think you have to be
11 walking by in that hallway, that common hallway. I
12 don't know that you can see into another pod.

13 Q. So my question is: You do know that the
14 people he allegedly told you he showed a note to,
15 Mario Rodriguez and Timothy Martinez, were in a
16 different pod?

17 A. Yes.

18 Q. So did you ask Mr. Urquizo: How is it that
19 two guys from a different pod could see a note that
20 you held up on the door of your cell?

21 A. Yes.

22 Q. What did he say?

23 A. That those two, being "Blue" and "Red,"
24 Rodriguez and Martinez, were on some kind of -- he
25 described it as, I think, a work detail or something;

1 something had them out in the hallway working or
2 cleaning or painting.

3 Q. So Mr. Urquizo told you that Mario
4 Rodriguez and Timothy Martinez were able to see these
5 notes he wrote because they were in a position where
6 they could see his cell door window?

7 A. Yes, that's what he said.

8 Q. And you said you walked through that
9 facility, Southern New Mexico Correctional Facility?

10 A. Once.

11 Q. Do you have a way to verify that that's
12 possible?

13 MR. CASTELLANO: Objection, Your Honor. I
14 believe that goes to credibility and not the actual
15 statements.

16 THE COURT: I'll allow this statement, this
17 question. Overruled.

18 A. You're asking if I believe that's possible?

19 Q. I just asked if you did anything to confirm
20 whether or not that's possible?

21 A. Not beyond talking to the corrections
22 officers, no.

23 Q. Well, did you talk to a corrections officer
24 that told you that was possible?

25 A. Yes, several.

1 Q. And did they explain how that would be?

2 A. Yes.

3 Q. How?

4 A. That those guys would be allowed to travel
5 between pods, or in that -- around that unit. And
6 that you could hold up a note or make hand signals or
7 any other kind of gesture through a window.

8 Q. So what they told you is that if Mario
9 Rodriguez and Timothy Martinez had access to Lupe
10 Urquizo's pod, then they could walk by his cell door
11 and see what was hanging up in his window?

12 A. Well, I think -- no, what I'm saying, is if
13 they had access to that hallway. I don't believe
14 that they ever entered his pod.

15 Q. Well, what hallway are you talking about?

16 A. I'm talking about -- maybe I shouldn't call
17 it a hallway -- but the area outside the pod.

18 Q. The area outside Mr. Urquizo's pod?

19 A. Yes.

20 Q. You mean outdoors?

21 A. No. His pod door doesn't open up to
22 outdoors. There are hallways.

23 Q. Well, his pod door opened up to a common
24 area, right?

25 A. Yes. Ms. Jacks, I think we're just not

1 agreeing on what we should call it. But I'll call it
2 the area outside the pod door.

3 Q. Okay. So the information you got, or your
4 verification consisted of talking to correctional
5 officers, who told you that if Mario Rodriguez or
6 Timothy Martinez were outside Mr. Martinez' pod door,
7 they could see a note held up?

8 A. Yes.

9 Q. And did you make -- this is a Level 4, New
10 Mexico State penal facility, right?

11 A. Yes.

12 Q. So inmates' movements are fairly highly
13 regulated, right?

14 A. Less so than in other facilities.

15 Q. Less so than Level 5 and Level 6?

16 A. Correct.

17 Q. But more so than Level 1, 2, and 3?

18 A. Fair to say.

19 Q. And did you make any effort -- do you know
20 whether inmates from one pod can travel into a
21 different pod?

22 MR. CASTELLANO: Objection, relevance.

23 THE COURT: Sustained. I think we're
24 getting a little far afield. I've given you a little
25 bit of leeway.

1 MS. JACKS: I appreciate that.

2 THE COURT: But I think we better bring it
3 back in.

4 Q. Did you speak with any correctional
5 officers to find out whether on March 6 or 7, 2014,
6 Mario Rodriguez and Timothy Martinez had left blue
7 pod?

8 A. No.

9 Q. Now, with respect to this note on the
10 window, did Mr. Urquizo tell you what day he got to
11 Southern New Mexico Correctional Facility?

12 A. I think he got there on the 4th or 5th, is
13 what he said.

14 Q. Did you verify that with any independent
15 information?

16 A. Yes.

17 Q. And what was that?

18 A. Department of Corrections' records.

19 Q. Okay. What did the Department of
20 Corrections' records show?

21 A. Inmates' travel.

22 Q. On what day did Mr. Urquizo arrive at
23 Southern New Mexico Correctional Facility according
24 to the Department of Corrections records?

25 A. I'd have to look at them.

1 Q. What day was Javier Molina -- what day was
2 the Molina homicide?

3 A. The 7th.

4 Q. March 7?

5 A. Yes.

6 Q. Okay. Did you ask Mr. Urquizo what day it
7 was that he first started putting these notes up on
8 the door -- on the window of his cell door?

9 A. My recollection was that these guys were on
10 him as soon as he got there. They were eager to find
11 out if the paperwork came down, because there was
12 supposed to be three people hit. And --

13 Q. May I stop you right there?

14 A. Sure.

15 Q. My question was: Did you ask Mr. Urquizo
16 when it happened?

17 A. Yes.

18 Q. And what was his answer?

19 A. That's what I'm thinking about.

20 Q. It sounds like what his answer was is right
21 away he started holding up his notes.

22 A. What does that mean? I mean, I have to ask
23 follow-up questions. And that's what I'm thinking
24 about.

25 Q. Okay. So from the time that he got there,

1 Mr. Urquizo told you he started holding up these
2 notes?

3 A. No.

4 Q. Okay.

5 A. He got there; he was put in orientation.
6 And that as soon as he was around these guys, being
7 other S members, they were all over him to find out
8 if he had paperwork. So he had to answer by writing
9 a note, because he wasn't free -- either in
10 orientation or locked up in his cell -- to freely
11 speak with them or communicate, other than through
12 note and hand signals and talking through the door.

13 Q. So do you know, was that on March 4, March
14 5, March 6, or March 7?

15 A. I would want to look at my notes and my
16 report to be more specific.

17 Q. If there is a date, it would be in your
18 302?

19 A. Yes.

20 Q. Or I'm sorry, if Mr. Urquizo gave you a
21 date?

22 A. He gave me one. We also pulled records
23 from Corrections to verify what we're told. We've
24 done that, and turned those over as well.

25 Q. Now, Mr. Urquizo, I think you testified

1 earlier, told you that he had held additional notes
2 up to the window the next day?

3 A. Do you mind if I look at my notes?

4 Q. Not at all.

5 A. Okay. So I make two references to a
6 letter, or notes. One is when "Blue" and "Red"
7 inquire about the paperwork. And that's done via
8 them holding up the note and him holding up a
9 response.

10 Later, I made reference to Rodriguez
11 sending a letter to Urquizo, sort of apologizing and
12 explaining why they had to move so quickly.

13 Those are the two letters or notes I
14 referred to.

15 Q. Okay. And it may be something got lost in
16 my listening to your testimony. So let me go back.
17 So, according to what you've just said -- again,
18 you've had a chance to refresh your memory --
19 according to what Lupe Urquizo told you, he said that
20 Mario Rodriguez and Timothy Martinez were the first
21 ones to hold up a note to the window of his cell?

22 A. Yes.

23 Q. And they wanted to know if there was
24 paperwork?

25 A. Yes.

1 Q. And then he held up a note back; is that
2 right?

3 A. Confirming that there was.

4 Q. Okay.

5 A. And he brought it.

6 Q. So that's the first -- and this is the
7 window of Mr. Urquizo's cell door?

8 A. Yes.

9 Q. And then there was another exchange at the
10 window of Mr. Urquizo's cell door?

11 A. Between other people and Mr. Urquizo, yes.

12 Q. Involving Mario Rodriguez?

13 A. No.

14 Q. Oh.

15 A. Carlos Herrera, Dale Chavez, Juan Mendez.

16 Q. And Alex Nunez?

17 A. Yes.

18 Q. Okay. You did testify about that earlier.
19 So this is the second time notes are being held up to
20 the cell door?

21 A. I don't think I said it was notes. They
22 were conversing through the door.

23 Q. Okay.

24 A. Because they're in the same pod.

25 Q. All right. So I was talking about the

1 notes. So let's go -- I'm going to get back to that
2 conversation. But I was talking about the notes.
3 And I thought what you answered was you also talked
4 about a letter that Mario Rodriguez wrote to Mr.
5 Urquizo, where he was apologizing to him for
6 something?

7 A. That's a subsequent letter, yes.

8 Q. And is that -- according to Mr. Urquizo's
9 story, is that also a note that was supposedly held
10 up to the window of his cell door?

11 A. No, that was a letter that he sent up.

12 Q. Okay. A letter that Mario Rodriguez sent
13 to Mr. Urquizo?

14 A. Yes.

15 Q. And how is that -- did Mr. Urquizo tell you
16 how that letter was sent? Obviously not through the
17 mail.

18 A. Just the SNM prison mail, yeah.

19 Q. Did he tell you?

20 A. Yes. He sent it over from the other pod.
21 We didn't break down the specific movements of it.

22 Q. Okay. So you're saying he got some sort of
23 prison communication. Was this also supposedly held
24 up in his window?

25 A. No.

1 Q. Okay. It was something that was slid under
2 his door, the door?

3 A. That's what I surmise, yes.

4 Q. Did you ask him how he got the letter?

5 A. Not beyond "Blue" sent me a letter, and
6 this is what it said.

7 Q. Okay. He didn't have a copy of the letter,
8 did he?

9 A. No.

10 Q. And you didn't ask him exactly how he got
11 it; you're just guessing when you say it was somehow
12 slid under his door?

13 A. I think I'm more than guessing. But no, I
14 didn't ask that question.

15 Q. Okay. And with respect to this supposed
16 letter that he got, when did he say he got that? Was
17 it the same day that the note had been held up, the
18 first note had been held up to his cell door, or a
19 different day?

20 A. Different day.

21 Q. Was it the next day? Two days later?

22 A. I think it was the next day.

23 Q. And did he tell you what time of day or
24 whether he was still on, quote, "orientation"?

25 A. I believe he still was on orientation. And

1 if he mentioned what time it was, it's going to -- if
2 he told me, it's in my 302.

3 Q. And correct me if I'm wrong, but the gist
4 of this letter that Mr. Urquizo told you about was it
5 was some sort of an apology because there was a
6 person he wanted hit that wasn't on the list, that
7 wasn't going to be hit?

8 A. No. He was due to be hit. The paperwork
9 didn't come, so there wouldn't be one.

10 Q. So he was going to have to wait?

11 A. Yes.

12 Q. Now, I want to go back to the conversation
13 with the four individuals: Carlos Herrera, Dale
14 Chavez, Juan Mendez, and Alex Munoz?

15 A. Yes.

16 Q. Okay. Mr. Urquizo told you that he had a
17 conversation with the four of these individuals while
18 he was still on orientation?

19 A. Well, I want to clarify something. We keep
20 saying it's while on orientation. What I can tell
21 you as I sit here is it was in the pod and Urquizo
22 was locked down in his room. Whether we're going to
23 call that orientation or not, I'm not sure if I'm
24 technically correct, but that's where it happened and
25 that was the setting.

1 Q. So Urquizo was locked in his cell, and
2 these guys were talking to him from the area outside
3 of cell?

4 A. Yes.

5 Q. All at the same time, according to Mr.
6 Urquizo?

7 A. Yes.

8 Q. And when did he say this conversation
9 happened? The same day that the first note was held
10 up -- that he says the first note was held up to his
11 window, or a different day?

12 A. Both days. The guys -- those guys and
13 others in the pod hovered around his door talking to
14 him. But he didn't have his property yet. So I
15 moved forward in my question of Urquizo to, "Well,
16 when you got your property, tell me what happened
17 then."

18 Q. Okay. So did he get his property?

19 A. He did.

20 Q. When did he say he got it?

21 A. It was definitely not the first day. I
22 think it was the second day. And that I covered in
23 the 302 quite a bit.

24 Q. Okay. And do you know approximately when
25 the second day?

1 A. I don't.

2 Q. Did he tell you?

3 A. I think so, but I just don't remember.

4 Q. And when he got his property, did Mr.
5 Urquizo tell you what he did with it?

6 A. Yes. He slid it under the door. And those
7 four people that you just mentioned read it and
8 commented on it.

9 Q. And the comment was, "Damn, this is it?
10 Two sentences," something like that?

11 A. Something like that.

12 Q. So sort of an incredulous sort of comment?

13 A. Yes.

14 Q. And the paperwork that he claims that he
15 slid under his door was this paperwork he'd
16 supposedly smuggled down with his legal materials?

17 A. Yes.

18 Q. Now, did you make any inquiries of anybody
19 at the New Mexico Department of Corrections about who
20 inventoried Mr. Urquizo's property at Southern New
21 Mexico Correctional Facility?

22 A. I have not.

23 Q. Did you find out who it was, if anybody,
24 that gave him his property back?

25 A. I don't know the name of the person that

1 did.

2 Q. Or when? Do you know when, in relation to
3 the Molina homicide?

4 MR. CASTELLANO: Objection, Your Honor.

5 THE COURT: Sustained.

6 Q. Do you have any independent verification
7 that shows that Mr. Urquizo's property was returned
8 to him prior to Mr. Molina being killed?

9 MR. CASTELLANO: Same objection.

10 THE COURT: Sustained.

11 Q. All right. I'm going to move on to Mr.
12 Urquizo's claim about Mr. Sanchez. And if my notes
13 are correct, you say that during one of your
14 interviews, Mr. Urquizo told you that after Molina
15 was killed, or during the time period that Molina was
16 killed, that he heard Daniel Sanchez yell, "Fuck,
17 yeah"?

18 A. Correct.

19 Q. Did he tell you that in all three of the
20 interviews, or --

21 A. No. I mean, I try not to cover the same
22 stuff we already talked about. It came up in one of
23 the interviews. And I, frankly, found that kind of
24 hard to believe. So I asked him about it: "How do
25 you know it was Sanchez?"

1 Q. Well, Mr. Urquizo and Mr. Sanchez were in
2 separate pods; correct?

3 A. Yes.

4 Q. They were separated by concrete walls?

5 A. They were.

6 Q. And was there any way that from his cell,
7 Mr. Urquizo could see into the adjacent pod?

8 A. No, not really. I mean, Urquizo and others
9 have described the response, but -- you know, of
10 officers and medical staff, but not -- no one has
11 been able to say they could see into the pod.

12 Q. Do you know the distance between Mr.
13 Urquizo's cell and the blue pod where Mr. Molina was
14 killed?

15 A. I don't.

16 Q. Do you know the last time Mr. Urquizo and
17 Mr. Sanchez ever spoke with each other?

18 A. Not off the top of my head, no.

19 Q. Do you know if they ever spoke to each
20 other?

21 A. Yes, I think they have.

22 Q. Did Mr. Urquizo tell you when, before
23 claiming to hear Mr. Sanchez yell, "Fuck, yeah," the
24 last time he'd spoken to Mr. Sanchez?

25 A. I don't know if I asked him that. I don't

1 know the answer to that.

2 Q. Now, during the homicide of Mr. Molina,
3 from when the attack on Mr. Molina first started, was
4 there an inmate that was on the phone in blue pod, to
5 your recollection?

6 A. At the specific time of the homicide, I
7 don't believe so. I know that I've spoken with two
8 defendants who told me they used the phone, and they
9 loitered about the phone. But I don't know that
10 someone was on it at the time of the homicide.

11 Q. Do you know if there is a recording from a
12 telephone call that encompasses the Molina homicide?
13 That was disclosed as part of discovery in this case.

14 A. If you said it did, I believe you.

15 Q. You don't have any independent
16 recollection?

17 A. No.

18 Q. Have you made any effort to listen to that
19 recording to see if you can hear somebody yell,
20 "Fuck, yeah," on the recording?

21 A. I just said I'm not aware of a recording.

22 Q. I'm going to move on to your statements
23 that you testified about regarding Jerry Montoya.
24 And I think where I want to start is, according to
25 your testimony, it sounds like Mr. Montoya initially

1 claims he was approached by a Michael (sic) Rodriguez
2 to participate in the stabbing of Mr. Molina?

3 A. Mario.

4 Q. Yeah, I'm sorry. Did I say --

5 A. You said "Michael."

6 Q. I'm sorry, Mario Rodriguez. Is that right?

7 A. Yes.

8 Q. And according to Mr. Montoya's statement,
9 he said it was around 5:00 p.m., the day of the
10 actual homicide?

11 A. Yes.

12 Q. According to what Mr. Montoya told you, he
13 told you that Mario Rodriguez told him not to worry
14 because he, meaning Mr. Sanchez, verified it. Is
15 that what Mr. Montoya told you?

16 A. That, yes, Montoya said that both Mario
17 Rodriguez and Sanchez had reviewed it and verified
18 it.

19 Q. Okay. But Montoya said that the person who
20 gave him the information that Mr. Sanchez had
21 verified it was actually Mario Rodriguez?

22 A. Yes.

23 Q. Mr. Montoya didn't say he heard that
24 directly from Mr. Sanchez?

25 A. Correct.

1 Q. And again, Mario Montoya (sic) said that he
2 was told something about Mr. Sanchez not wanting the
3 camera covered?

4 A. Right.

5 Q. But that wasn't from Mr. Sanchez either;
6 that was, according to Mr. Montoya, that was from
7 Mario Rodriguez?

8 A. Yes.

9 Q. When was it that Mr. Montoya first made
10 these statements to you?

11 A. Well, Mr. Montoya already had an attorney,
12 so it took us a little bit longer to arrange a
13 debrief. So the specific answer is that would be,
14 again, the first sentence of my 302, I'll note where,
15 what date, when it took place.

16 Q. It was after the original indictment in
17 December 2015, right?

18 A. It was definitely after, yes.

19 Q. And it was after the second indictment in
20 2016, wasn't it?

21 A. I don't remember.

22 Q. Well, in fact, it was sometime, what,
23 almost a year ago, right?

24 A. If you have the date, ma'am, I trust you.
25 I'm not sure.

1 Q. Prior to telling you this at that -- prior
2 to telling you that it was Mario Rodriguez who told
3 him what he wanted him to do and said, "Don't worry,
4 Sanchez verified it," and that Sanchez didn't want
5 the camera covered, prior to telling you that, had
6 Mr. Montoya made inconsistent statements about his
7 participation in the stabbing of Mr. Molina?

8 A. To other law enforcement?

9 Q. Yes.

10 A. I believe he did.

11 Q. And, in fact, did he deny his
12 participation?

13 A. I assume he would.

14 Q. Is that a yes?

15 A. It's been some time since I read it, but he
16 probably did.

17 Q. I think based on the direct examination,
18 the only direct communication that you testified
19 about today between Mr. Sanchez and Mr. Montoya is
20 that Mr. Montoya claims that Mr. Sanchez said to him
21 something along the line of, "You know what's up?"

22 A. "Okay, be trucha."

23 Q. Meaning, "Okay, be careful"?

24 A. Yes.

25 Q. And that's the only conversation that Mr.

1 Montoya claims to have had with Mr. Sanchez directly?

2 A. That I recall, yes.

3 Q. And when was that communication with Mr.
4 Sanchez according to Mr. Montoya?

5 A. The day of the homicide.

6 Q. And was it before or after Mr. Rodriguez
7 had told him that he was supposed to be participating
8 in the stabbing of Mr. Molina?

9 A. After.

10 Q. So if the conversation between Montoya and
11 Rodriguez happened at 5:00 p.m., this was sometime
12 after 5:00 p.m.?

13 A. That makes sense.

14 Q. Okay. And did you ask Mr. Montoya where he
15 was and where Mr. Sanchez was when that communication
16 supposedly happened?

17 A. In Montoya's cell.

18 Q. Now, there is video recording of the
19 activities in blue pod on March 7, 2014, surrounding
20 the time of the Molina homicide, right?

21 A. Yes.

22 Q. Have you watched those recordings?

23 A. I have.

24 Q. And have you reviewed those recordings to
25 see if, in fact, Mr. Sanchez and Mr. Montoya entered

1 Mr. Montoya's cell, or were present in Mr. Montoya's
2 cell sometime after 5:00 p.m.?

3 A. As I sit here, I couldn't tell you.

4 Q. Did you make any effort to look?

5 A. I've watched it several times, yes.

6 Q. And, specifically, did you make any effort
7 to identify that moment in time where these two were
8 supposedly alone in Mr. Montoya's cell?

9 A. I don't remember making note of that.

10 Q. And obviously if it did happen, that would
11 have been something you would have made a note of,
12 right, because it would have been important, it would
13 have corroborated the claims of Mr. Montoya?

14 A. I don't think I did.

15 Q. You don't think did you what?

16 A. I don't think I sought out that specific
17 section to corroborate that.

18 Q. Did you make any effort to corroborate the
19 statement of Mr. Montoya with respect to --

20 MR. CASTELLANO: Objection, relevance.

21 THE COURT: Sustained.

22 Q. All right. So now I'm moving on to, I
23 think, a statement of Mr. Armenta that you testified
24 about. And just to direct your attention, I think on
25 direct examination you testified that Mr. Armenta

1 said that he was --

2 A. Ma'am, I'll stop you. I didn't talk about
3 him.

4 Q. So maybe my notes are bad. I have
5 something here about Mr. Sanchez supposedly signaling
6 to Mr. Montoya to go up, and Montoya went up the
7 stairs and sat next to Armenta, who was hanging in
8 front of his cell. Do you recall that testimony?

9 A. I do. Montoya's version of what happened,
10 yes.

11 Q. Okay. So that's something that Mr. Montoya
12 told you supposedly happened?

13 A. Yes.

14 Q. And when he told that you, did you ask him,
15 Well, where was -- where were you? Where was Mr.
16 Sanchez? What was the signal that he supposedly
17 gave?

18 A. Yes. I asked him to walk me through it.

19 Q. And what did he say?

20 A. I don't remember if it was a nod or a
21 point, I'd have to look at my 302. But that's a
22 summation of what Mr. Montoya told me occurred.

23 Q. And where did Mr. Montoya say Mr. Sanchez
24 was when the signal was supposedly made?

25 A. I believe he said he was downstairs.

1 Q. And where was Mr. Montoya when the signal
2 was supposedly made?

3 A. Down as well.

4 Q. So both people were allegedly on the -- in
5 the common area downstairs?

6 A. Yes.

7 Q. And again, did you review the video from
8 blue pod the evening of the Molina stabbing to
9 determine whether such a signal was actually made by
10 Mr. Sanchez?

11 A. Yes. And I don't recall seeing the signal.
12 I just recall seeing Montoya go upstairs.

13 Q. All right. I'm moving on to Timothy
14 Martinez. One of the first things in my notes is
15 that -- I have you saying that Timothy Martinez told
16 you that Mario Rodriguez told him the morning of the
17 Molina homicide to go get high?

18 A. Yes.

19 Q. Is that accurate?

20 A. It is.

21 Q. Okay. And the morning being sometime
22 before noon?

23 A. I'd assume so.

24 Q. And is -- according to the story of Timothy
25 Martinez, was it also in the morning that he then

1 engaged Mr. Rodriguez in this conversation about:
2 Why would I go get high, and was getting sort of an
3 attitude about why Rodriguez was telling him what to
4 do?

5 A. Yes.

6 Q. So, again, before noon, right? That's what
7 morning means?

8 A. It does to you and I, yes. I think it was
9 probably before noon.

10 Q. You can confirm that Mr. Martinez actually
11 said the word morning --

12 A. Yes.

13 Q. -- the morning of?

14 A. Yes.

15 Q. And again, when was this interview with Mr.
16 Martinez? Or maybe we should say -- I don't know how
17 many you've had. More than one?

18 A. I definitely had more than one. This --
19 the first interview looks like December 29.

20 Q. Of what year?

21 A. 2016.

22 Q. So after the indictment?

23 A. Yes.

24 Q. The first indictment. Actually, over a
25 year after the first indictment, right?

1 A. Yes.

2 Q. And prior to December 29 of 2016, Mr.
3 Martinez had made statements that were -- that denied
4 any sort of participation in the Molina homicide,
5 right?

6 A. Yes.

7 Q. Okay. And was it during the same interview
8 with Mr. Martinez that Mr. Martinez told you that
9 Michael (sic) Rodriguez said that it was Daniel
10 Sanchez that wanted Timothy Martinez to participate
11 in the assault on Molina?

12 A. Mario. Yes.

13 Q. Okay. So that wasn't something that Daniel
14 Sanchez told Mr. Martinez?

15 A. No, they had their own subsequent
16 conversation. But the one you just recounted was
17 between Mario Rodriguez and Timothy Martinez.

18 Q. And this is the same conversation when
19 Mario Rodriguez told Timothy Martinez that he's
20 supposed to go in and beat up Molina so that he can't
21 leave?

22 A. Essentially, I think it was "knock him
23 out," yes.

24 Q. And was this conversation part of the same
25 morning conversation about how the assault on Molina

1 was going to go down?

2 A. Yes. I can clarify an earlier answer if
3 you want me to regarding times.

4 Q. That's fine.

5 A. I see it on page 3 of my December 29
6 debrief report. Martinez returned to the pod, you
7 and I were discussing it being in the morning. He
8 specifically says he returned to the pod at around
9 3:40 or 3:45 p.m.

10 Q. Okay. So he's saying it was the afternoon?

11 A. The day of the homicide, yes.

12 Q. Was there a previous statement that he made
13 to you that it was in the morning of the Molina
14 homicide that Mario Rodriguez told him he needed to
15 go get high?

16 A. I don't know how you and I got on that. I
17 went along with that, but I'm not sure how we got on
18 morning.

19 Q. Yeah, well, I think when you initially
20 testified about the statement, you said the morning,
21 but --

22 A. I think I read from my notes. And I can
23 check them.

24 Q. Sure, if you have them up there.

25 A. We're talking about Martinez, and I went

1 directly from the 302, so -- I'm sorry, I just don't
2 know where we got morning.

3 Q. Okay. Was that something in your notes?

4 A. Well, no. When I was being questioned by
5 Mr. Castellano, I went off some highlights in my 302.
6 So I think maybe where we got stuck on morning was
7 that at 7:30 in the morning he left the pod to attend
8 his shift at the wheelchair program. I just wanted
9 to clarify.

10 Q. I think that's important, so I appreciate
11 that. So Martinez, basically according to what you
12 seem to recall from these interviews, was gone from
13 7:30 in the morning till about 3:30 in the afternoon.

14 A. I'm recording what he tells me, yes.

15 Q. So if you did say morning, that was a
16 mistake?

17 A. If I did -- I thought I was following your
18 lead.

19 Q. I was just looking at my notes what you
20 said before. Whatever, I'm glad we got it cleared
21 up.

22 So according to your 302, the conversation
23 that supposedly Martinez had with Mario Rodriguez was
24 somewhere around 3:40, 3:45 in the afternoon.

25 A. Yes. That's when he returned to the pod,

1 yes.

2 Q. And it was the same day of the Molina
3 homicide?

4 A. Yes.

5 Q. Now, you testified about some conversations
6 that Mr. Martinez claimed to have had with Mr.
7 Sanchez?

8 A. Yes.

9 Q. And I want to start with the first one
10 where I think you said that Mr. Sanchez asked if
11 "Blue" had talked to him yet?

12 A. I remember that, yes.

13 Q. So did you ask Mr. Martinez when that
14 conversation occurred and where?

15 A. Yes.

16 Q. What did he say?

17 A. It was after court, which was I think at
18 4:00 p.m. So this is shortly after returning from
19 the wheelchair program. I mean, I can read from my
20 report, but what I recall is he was making coffee,
21 and Mr. Sanchez came in and asked him some questions
22 relating to: "Did "Blue" talk to you and explain
23 what's going on?"

24 Q. So he -- Mr. Martinez was making coffee
25 where?

1 A. In his cell.

2 Q. So this is a conversation that Mr. Martinez
3 told you took place with -- between himself and Mr.
4 Sanchez and Mr. Martinez' cell?

5 A. No, I think that they had the ability to do
6 that, except that now it's count, or it's about to be
7 count, so everyone has to go into their house, or
8 their cell. And Martinez was making coffee, and Mr.
9 Sanchez was pounding on his wall to get his
10 attention. They had adjoining cells.

11 Q. So this was a conversation, according to
12 Martinez, that was between cells through the wall or
13 a vent or something?

14 A. Yes.

15 Q. And then I think you went on to say that
16 Mr. Martinez told you that Mr. Sanchez said something
17 about SNM needing to take things back, and that when
18 the S used violence, the S gets respect. I'm
19 paraphrasing.

20 A. That paraphrases it.

21 Q. When was that it Mr. Martinez claimed that
22 Mr. Sanchez said that?

23 A. This would be sometime around the 4:00
24 count. And I don't know how long count takes, but
25 sometime after.

1 Q. So this was part of the conversation that
2 he claimed to have with Mr. Sanchez between the two
3 of them while they're both in their cells?

4 A. Yes.

5 Q. While they're both in their separate cells?

6 A. Correct.

7 Q. And I think the final statement that you
8 attribute -- that you said Timothy Martinez
9 attributed to Mr. Sanchez was to the effect of --
10 that Mr. Martinez needs to participate in the assault
11 on Molina because he hadn't earned his bones, and
12 that he needed to do it or else?

13 A. Correct.

14 Q. When did Mr. Martinez claim that happened?

15 A. That's that same conversation.

16 Q. Mr. Martinez told you that Mario Rodriguez
17 lobbied to give Martinez a pass, but that Mr. Sanchez
18 insisted that he participate?

19 A. That's the story, according to --

20 Q. Mr. Martinez?

21 A. Correct.

22 Q. Did Mr. Martinez give you the details of
23 that situation? I mean, did he actually see Mario
24 Rodriguez speaking with Mr. Sanchez about that?

25 A. No. I mean, he related that they were

1 tight, Mr. Sanchez and Mr. Rodriguez. But he didn't
2 say he saw them having that conversation.

3 Q. Okay. Did he say anything other than
4 that's what Mario Rodriguez told him?

5 A. No. I mean, he gave me some background on
6 why Mr. Sanchez might feel that way. But that's all
7 he said about that.

8 Q. Did he say when that supposedly happened?

9 A. When Mario and Mr. Sanchez talked?

10 Q. When Mario Rodriguez was doing his lobbying
11 to give Martinez a, quote, "pass"?

12 A. No. I'd assume it was earlier that day or
13 in the days leading up to it. But I don't have the
14 exact time.

15 Q. And you didn't ask Mr. Martinez when that
16 allegedly happened, if it did?

17 A. No, he just related what Rodriguez told
18 him.

19 Q. And other than Rodriguez telling him, he
20 didn't have any other personal knowledge about that
21 conversation actually taking place between Rodriguez
22 and Daniel Sanchez?

23 A. No.

24 Q. Now, I'm unclear -- and I'll admit that my
25 notetaking suffered during the direct examination.

1 But I have here something about on January 26, of
2 some unknown year, there was somebody -- and I'm not
3 sure if it's Mr. Rodriguez or somebody else talking
4 about statements by Mr. Rodriguez -- that Mr.
5 Rodriguez stood in the door, as Molina was getting up
6 and yelling, "He's getting up. What the fuck?"

7 A. Yes, so I probably referred to my January
8 26, 2017, 302 report.

9 Q. And that's of who? What interview?

10 A. Timothy Martinez.

11 Q. Okay. So that was something that Timothy
12 Martinez told you?

13 A. Yes. This is -- more specifically, I had
14 some issues or follow-up questions with my earlier
15 interview. So I'm drilling down, if you will, on
16 other additional details.

17 Q. And so on that date it was Martinez that
18 was attributing some statements to Mario Rodriguez
19 about yelling, "He's getting up. What the fuck?"

20 A. Correct.

21 Q. And at that point, Mr. Martinez claims that
22 Rodriguez is standing by the cell door of Javier
23 Molina?

24 A. Yes.

25 THE COURT: Ms. Jacks, would this be a good

1 point for us to take our break for the evening?

2 MS. JACKS: I think it is. And I actually
3 think I'm done.

4 THE COURT: Okay. All right.

5 MS. JACKS: Then I have overnight to think
6 about things.

7 THE COURT: I know. I've had that
8 experience many times in my life.

9 All right. I appreciate everybody's hard
10 work. See you tomorrow morning. And have a good
11 evening. Be safe in your travels.

12 (The Court stood in recess.)
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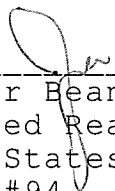
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UNITED STATES OF AMERICA

DISTRICT OF NEW MEXICO

I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
Official Court Reporter for the State of New Mexico,
do hereby certify that the foregoing pages constitute
a true transcript of proceedings had before the said
Court, held in the District of New Mexico, in the
matter therein stated.

In testimony whereof, I have hereunto set my
hand on December 6, 2017.



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